



# भारत का राजपत्र

## The Gazette of India

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

साप्ताहिक

WEEKLY

सं. 19]

नई दिल्ली, मई 3—मई 9, 2015, शनिवार/वैशाख 13—वैशाख 19, 1937

No. 19]

NEW DELHI, MAY 3—MAY 9, 2015, SATURDAY/VAISAKHA 13—VAISAKHA 19, 1937

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक् संकलन के रूप में रखा जा सके।  
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड ( ii )  
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों ( रक्षा मंत्रालय को छोड़कर ) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं

Statutory Orders and Notifications Issued by the Ministries of the Government of India  
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 23 अप्रैल 2015

**का.आ. 906.**—केन्द्र सरकार एतदद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं° 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए जयपुर स्थित राजस्थान उच्च न्यायालय में दिल्ली विशेष पुलिस स्थापना (सीबीआई) द्वारा जांच किए गए मामलों तथा उनसे उत्पन्न प्रासंगिक अन्य मामलों में अभियोजन का संचालन, अपील एवं पुनरीक्षण हेतु श्री अश्विनी कुमार शर्मा, अधिवक्ता को दिल्ली विशेष पुलिस स्थापना (केन्द्रीय अन्वेषण ब्यूरो) के विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[फा० सं° 225/42/2011-एवीडी-II]

अजित कुमार, अवर सचिव

**MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES  
AND PENSIONS**

(Department of Personnel and Training)

New Delhi, the 23rd April, 2015

**S.O. 906.**—In exercise the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure,

1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri Ashwini Kumar Sharma, Advocate as Special Public Prosecutor for the Delhi Special Police Establishment (Central Bureau of Investigation) in the Rajasthan High Court at Jaipur for conducting the prosecution, appeals, revisions or other matters arising out of the cases investigated by the Delhi Specil Police Establishment (CBI).

[F. No. 225/42/2011-AVD-II]

AJIT KUMAR, Under Secy.

नई दिल्ली, 24 अप्रैल, 2015

**का.आ. 907.**—केन्द्र सरकार आंश्र प्रदेश सरकार के गृह (एससीए), विभाग की सहमति से एतदद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं° 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए दिनांक 1 अप्रैल, 2014 के अधिसूचना जी०ओ० 69 के अनुसार कृष्णापट्टनम, काकीनाड़ा तथा विशाखापट्टनम बंदरगाहों (आंश्र प्रदेश) से लौह अयस्क के अवैध निर्यात के लिए प्रयासों, उक्सावे तथा साजिशों के संबंध में उपर्युक्त अपराधों के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों

की शक्तियों एवं न्यायाधिकार क्षेत्र का विस्तार संपूर्ण अंश राज्य पर करती है।

[फा० सं० 228/33/2014-एवीडी-II]

अजित कुमार, अवर सचिव

New Delhi, the 24th April, 2015

**S.O. 907.**—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State

Government of Andhra Pradesh, Home (SCA) Department *vide* Notification G.O. Ms. No. 69 dated 1st April, 2014, hereby extends powers and jurisdiction of the members of the Delhi special Police Establishment to the whole of the State of Andhra Pradesh for investigation/enquiry into the illegal Iron Ore transport from Krishnapatnam, Kakinada and Visakhapatnam Ports (Andhra Pradesh) and attempts, abetments and conspiracies in relation to above mentioned offences.

[F. No. 228/33/2014-AVD-II]

AJIT KUMAR, Under Secy.

### उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 20 अप्रैल, 2015

**का.आ. 908.**—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम 6 के उपनियम (3) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा नीचे अनुसूची में दिए गए उत्पादों की मुहरांकन शुल्क अधिसूचित करता है:

#### अनुसूची

भारतीय मानक संख्या	भाग	अनु- भाग	वर्ष	उत्पाद	इकाई	न्यूनतम मुहरांकन शुल्क		इकाई दर स्लैब 1	स्लैब में शेष प्रचालन तिथि
						बड़े पैमाने पर	छोट पैमाने पर		
15532	-	-	2004	फलों एवं सब्जियों के लिए प्लास्टिक क्रेट्स - विशिष्टि	100 पीस	72,500.00	58,000.00	45.00	सभी - 15.03.2015

[संदर्भ : सीएमडी-2/जी-18]

दिनांक: 20 अप्रैल, 2015

एम० जे० जोसफ, महानिदेशक

### MINISTRY OF CONSUMERS AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 20th April, 2015

**S.O. 908.**—In pursuance of sub-regulation (3) of regulation 6 of the Bureau of Indian Standards (Certification) Regulation 1988, the Bureau of Indian Standards, hereby notifies the Marking fee for the products given in the schedule:

#### SCHEDULE

IS No.	Part	Sec	Year	Product	Units	Minimum Marking Fee		Unit Rate	Units in Slab-1	Remaining in Slab-1	Effective Date
						Large Scale	Small Scale				
15532	-	-	2004	Plastic Crates for Fruits and Vegetable Pieces -Specification	100	72,500.00	58,000.00	45.00	All	-	15.03.2015

[Ref: CMD-II/G-18]

Date: 20th April, 2015

M. J. JOSEPH, Director General

नई दिल्ली, 21 अप्रैल, 2015

**का.आ. 909.**—भारतीय मानक व्यूरो (प्रमाणन) विनियम 1988 के विनियम 6 के उपनियम (3) के अनुसरण में भारतीय मानक व्यूरो एतद्वारा नीचे अनुसूची में दिए गए उत्पादों की मुहरांकन शुल्क अधिसूचित करता है:

## अनुसूची

भारतीय भाग मानक संख्या	अनु- भाग	वर्ष उत्पाद	इकाई पर	न्यूनतम मुहरांकन शुल्क		इकाई दर स्लैब पर	स्लैब में इकाइयां (रु.)	शेष प्रचालन तिथि
				बड़े पैमाने पर	छोटे पैमाने पर			
16289	-	2014 चिकित्सीय वस्त्रादि-चेहरे के सर्जिकल नकाब - विशिष्टि	100 पीस	79,000.00	63,200.00	0.2	सभी	- 04 03 2015

[संदर्भ : सीएमडी-2/जी-18]

दिनांक: 21 अप्रैल, 2015

एम० जे० जोसफ, महानिदेशक

New Delhi, the 21st April, 2015

**S.O. 909.**—In pursuance of sub-regulation (3) of regulation 6 of the Bureau of Indian Standards (Certification) Regulation 1988, the Bureau of Indian Standards, hereby notifies the Marking fee for the products given in the schedule:

## SCHEDULE

IS No.	Part	Sec	Year	Product	Units	Minimum Marking Fee		Unit Rate Slab-1 Rs.	Units in Slab-1	Remain- ing	Effective Date
						Large	Small				
16289	-	-	2014	Medical Textiles— Surgical Face Masks	100 Pieces	79,000.00	63,200.00	0.2	All	-	04 03 2015

[Ref: CMD-2/G-18]

Date: 21st April, 2015

M.J. JOSEPH, Director General

नई दिल्ली, 6 अप्रैल, 2015

**का.आ. 910.**—भारतीय मानक व्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक व्यूरो एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गये हैं।

## अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	स्थापित तिथि	भारतीय मानक (कों) जो कि रद्द होने हैं, अगर है, की संख्या वर्ष और शीर्षक	रद्द होने की तिथि
(1)	(2)	(3)	(4)	(5)
1.	आई एस 3812 (भाग 1): 2013 चूर्ण ईंधन की राख - विशिष्टि भाग 1 सीमेंट, सीमेंट के मसाले (मोर्टार) व कंक्रीट में पोजोलाना की तरह प्रयोग के लिए (तीसरा पुनरीक्षण)	06 अप्रैल 2015	आई एस 3812 (भाग 1): 2003 (दूसरा पुनरीक्षण)	06 अक्टूबर 2015
2.	आई एस/आई एस ओ 11114-2: 2013 परिवहनी गैस सिलिंडर- गैस के संघटक से सिलिंडर एवं वाल्व	06 अप्रैल 2015	आई एस/ आई एस ओ 11114-2: 2000	06 अप्रैल 2015

(1)	(2)	(3)	(4)	(5)
	सामग्री की अनुरूपता भाग 2 अधात्वीय सामग्रियाँ			
3.	आई एस 13152 (भाग 1) : 2013 सुवाहय ठोस बार्यों - मॉस कुकस्टोव (चूल्हा) - विशिष्टि (पहला पुनरीक्षण)	06 अप्रैल 2015	आई एस 13152 (भाग 1) : 1991	06 अप्रैल 2016

इस भारतीय मानक की प्रतियां भारतीय मानक व्यूरो, मानक भवन, 9 बहादुर शाह ज़फर मार्ग, नई दिल्ली 110 002 क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चंडीगढ़, चेन्नई, मुंबई, तथा शाखा कार्यालयों अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयंबटूर, गुवाहाटी, हैदराबाद, जयपुर, नागपुर, पटना, पूरे तथा कोचि में बिक्री हेतु उपलब्ध हैं। भारतीय मानकों को <http://www.standardsbis.in> द्वारा इंटरनेट पर खरीदा जा सकता है।

[संदर्भ: पीयूबी/जीएन-1 : 1-V-II]

दिनांक: 06.04.2015

प्रभाकर राय, निदेशक

New Delhi, the 6th April, 2015

**S.O. 910.**—In pursuance of Clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the second column of Schedule hereto annexed has been established on the date indicated against it in third column. The particulars of the standards, if any, which are given in the fourth column shall also remain in force concurrently till they are cancelled on the date indicated against them in the fifth column.

#### SCHEDULE

Sl No.	No. & Year of the Indian Standards Established	Date of Establishment	No. & Year of the Indian Standards to be cancelled, if any	Date of Cancellation
(1)	(2)	(3)	(4)	(5)
1.	IS 3812 (Part 1) : 2013 Pulverized Fuel Ash-Specification: Part 1 for use as Pozzolana in Cement, Cement Mortar and Concrete (Third Revision)	06 April 2015	IS 3812 (Part 1) : 2003 (Second Revision)	06 October 2015
2.	IS/ISO 11114-2 : 2013 Transportable Gas Cylinders-Compatibility of Cylinder and Valve Materials with Gas Contents Part 2 Non-Metallic Materials	06 April 2015	IS/ISO 11114-2:2000	06 April 2015
3.	IS 13152 (Part 1) : 2013 Portable Solid Bio-Mass Cookstove (Chulha)-Specification (First Revision)	06 April 2015	IS 13152 (Part 1) : 1991	06 April 2016

Copies of these standards are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi—110002 and Regional Offices : Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Nagpur, Patna, Pune, Kochi.

[Ref: PUB/GN-1: 1-V-II]

Date: 06.04.2015

PRABHAKAR RAI, Director

नई दिल्ली, 30 अप्रैल, 2015

**का.आ. 911.**—भारतीय मानक व्यूरो (प्रमाणन) विनियम 1988 के विनियम 4 के उपनियम (5) के अनुसरण में भारतीय मानक व्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं:-

**अनुसूची**

क्र०	लाइसेंस सं०	स्वीकृत करने की सं०	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्ष	भा. मा सं० ( भाग/अनुभाग) : वर्ष
(1)	(2)	(3)	(4)	(5)	(6)
1.	6500003594	20150401	मेसर्स रीलेक्स एक्वा फार्म टी एस सं. 902, चेक्कुकरार तोट्टम, सुरियन नगर एक्स्टेंशन, एबीटी मुख्य सड़क, तिरुप्पुर-641 604	पैकेजबंद पेय जल (पैकेजबंद मिनरल जल के अलावा)	IS 14543 : 2004
2.	6500003695	20150401	मेसर्स संगमेश्वरा मिनरल्स एस एफ सं 2/1 & 2/2, तुलसी मेटु तोट्टम, मिनरल जल के अलावा) भवानी ब्लॉक, तल्लाकुलम गांव, वरन्तानल्लूर पोस्ट, ईरोड-638 302	पैकेजबंद पेय जल (पैकेजबंद मिनरल जल के अलावा)	IS 14543 : 2004
3	6500003998	20150407	मेसर्स आनन्द पम्प इंडस्ट्रीज सं 2, जानकीअम्माल ले-ऑट, अम्बाल नगर, शोभा नगर रोड, आवारमपालयम, कोयम्बत्तूर-641 006	निम्मजनीय पम्पसेट	IS 8034 : 2002
4.	6500003897	20150407	मेसर्स हरी इंजीनियरिंग वर्क्स दरवाजा सं 2F-1, वरदराजुलु नगर, एल एम डल्ल्यू-एफ सी आई रोड, गणपति, कोयम्बत्तूर-641 006	निम्मजनीय पम्पसेट	IS 8034 : 2002
5.	6500003796	20150407	मेसर्स हरी इंजीनियरिंग वर्क्स दरवाजा सं 2F-1, वरदराजुलु नगर, एल एम डल्ल्यू-एफ सी आई रोड, गणपति, कोयम्बत्तूर-641 006	गहरे कुओं के लिए निम्मजनीय पम्पसेट	IS 14220 : 1994
6.	6500004192	20150408	मेसर्स वैकिंग इंडस्ट्रीज सं 7 - 12, ए सी टाइम प्रायवेट इंडस्ट्रियल एस्टेट स्ट्रीट, सिडको, कुरिची, कोयम्बत्तूर - 641 021	गहरे कुओं के लिए निम्मजनीय पम्पसेट	IS 14220 : 1994
7.	6500004293	20150410	मेसर्स शिवम ट्रेडर्स सं 133, श्री कुमरन तंगामालिगै, न्यू मार्केट स्ट्रीट, तिरुप्पुर - 641 604	चांदी एवं चांदी मिश्रधातुएं, आभूषण/शिल्पकारी-शुद्धता एवं मुहरांकन	IS 2112 : 2003
8.	6500004091	20150410	मेसर्स एन एन वारणवासी गौन्डर ज्वेलरी 12, पोन्न स्ट्रीट, ईरोड-638 001	चांदी एवं चांदी मिश्रधातुएं, आभूषण/शिल्पकारी-शुद्धता एवं मुहरांकन	IS 2112 : 2003
9.	6500004394	20150415	मेसर्स फ्लो स्टार पम्पस सं. 66, इलनो नगर, आवारमपालयम, गणपति पोस्ट, कोयम्बत्तूर-641 006	साफ, ठंडे पानी के लिए अपकेंद्रीय पुनरुत्पादक पम्प	IS 8472 : 1998
10.	6500005093	20150415	मेसर्स वेल पम्पसेट्स 66A-67A, अतिपालयम रोड, गणपति, कोयम्बत्तूर-641 006	निम्मजनीय पम्पसेट	IS 8034 : 2002
11.	6500004903	20150415	मेसर्स वेल पम्पसेट्स 66A & 67A, अतिपालयम रोड, गणपति, कोयम्बत्तूर-641 006	निम्मजनीय पम्पसेट के लिए मोटर	IS 9283 : 2013

(1)	(2)	(3)	(4)	(5)	(6)
12.	6500004495	20150416	मेसर्स वेलमुरुगन मिनरल्स 197-C, अनैपुद्र, तिरुमुरुगन पूँडू कोवै, मुख्य रोड, अविनाशि तालुक, तिरुप्पूर-641 652	पैकेजबंद पेय जल (पैकेजबंद मिनरल जल के अलावा)	IS 14543 : 2004
13.	6500004697	20150416	मेसर्स रेहनट्री बीवरेजस सं 6/154-D कुमुचीपालयम, अल्ललापुरम रोड, मिनरल जल के अलावा) कारैपुदुर गांव, वीरापान्डी पोस्ट, तिरुप्पूर-641 605	पैकेजबंद पेय जल (पैकेजबंद मिनरल जल के अलावा)	IS 14543 : 2004
14.	6500004596	20150416	मेसर्स ललिता ज्वेलरी मार्ट प्रायवेट लिमिटेड 564, ओप्पनाकारा स्ट्रीट, कोयम्बतूर-641 001	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी-शुद्धता एवं मुहरांकन	IS 1417 : 1999
15.	6500004798	20150417	मेसर्स नागुरतिना इंडस्ट्रीस एस एफ सं 399, वीरबत्रम तुङ्गु तोटम, सेवन्तमपालयम, तिरुप्पूर-641 606	पैकेजबंद पेय जल (पैकेजबंद मिनरल जल के अलावा)	IS 14543 : 2004
16.	6500005194	20150420	मेसर्स एल्जी अल्ट्रा इंडस्ट्रीस लिमिटेड एस एफ 95/1B, अविनाशि रोड, तेन्नमपालयम, अरसूर पोस्ट, कोयम्बतूर-641 407	सिंचाई उपस्कर-स्प्रिंकलर पाइप-भाग 1 : पालीएथिलीन पाइप	IS 14151 (Part 1) : 1999
17.	6500004899	20150420	मेसर्स श्री रंगाराज इस्पात इंडस्ट्रीस प्राइवेट लिमिटेड प्लॉट सं MM1, 2, 4, 5, सिपकोट इंडस्ट्रियल ग्रोथ सेन्टर, पेरुन्दुरै, ईरोड-638 052	सामान्य संरचना इस्पात में पुनर्वेल्लन के लिए कॉर्बन, ढलवां इस्पात बिलेट इंगट, बिलेट, ब्लूम एवं स्लैब	IS 2830 : 2012
18.	6500005295	20150427	मेसर्स कृष्ण टेक्स एस एफ सं 255, नालु काल तोटम, राक्काची गार्डन के पीछे, मणियकरमपालयम, गणपति, कोयम्बतूर-641 006.	गहरे कुओं के लिए निम्नजनीय पम्पसेट	IS 14220 : 1994

[सं. सीएमडी/13 : 11]

एम° सदाशिवम, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 30th April, 2015

**S.O. 911.**—In pursuance of sub-regulation (5) of the regulation 4 of the Bureau of Indian Standards (Certification) Regulation 1988, of the Bureau of Indian Standards, hereby notifies the grant of licence particulars of which are given in the following schedule:

## SCHEDULE

Sl. No.	Licence No.	Grant Date	Name and Address (Factory) of the Party	Title of the Standard	IS No. Part/ Sec. Year
(1)	(2)	(3)	(4)	(5)	(6)
1.	6500003594	20150401	M/s. Reelax Aqua Farm TS No. 902, Chekkukarar Thottam, Suriyan Nagar Extn, ABT Main Road Tirupur-641 604	Packaged Drinking Water (other than Packaged Natural Mineral Water)	IS 14543 : 2004
2.	6500003695	20150401	M/s. Sangameswara Minerals SF NO. 2/1 & 2/2, Thulasi Mettu	Packaged Drinking Water (other than Packaged	IS 14543 : 2004

(1)	(2)	(3)	(4)	(5)	(6)
			Thottam, Bhavani Block, Thallakulam Village, Varatha Nallur (P.O.), Erode-638 302.	Natural Mineral Water	
3.	6500003998	20150407	M/s. Anand Pump Industries No. 2, Janakiammal Layout, Ambal Nagar, Shobha Nagar Road, Avarampalayam, Coimbatore-641 006	Submersible Pumpsets	IS 8034 : 2002
4.	6500003897	20150407	M/s. Hari Engineering Works D No 2F-1, Varadharajulu Nagar, Near LMW-FCI Road, Ganapathy, Coimbatore-641 006	Submersible Pumpsets	IS 8034 : 2002
5.	6500003796	20150407	M/s. Hari Engineering Works D No. 2F-1. Varadharajulu Nagar, Near LMW-FCI Road, Ganapathy, Coimbatore-641 006	Openwell Submersible Pumpsets	IS 14220 : 1994
6.	6500004192	20150408	M/s. Viking Industries No. 7 & 12, AC Type Private Industrial Estate Street, SIDCO, Kurichi, Coimbatore-641 021.	Openwell Submersible Pumpsets	IS 14220 : 1994
7.	6500004293	20150410	M/s. Shivam Traders No. 133, Sree Kumaran Thangamaligai, New Market Street, Tiruppur-641 604	Silver and Silver Alloys, Jewellery/Artefacts - Fineness and Marking	IS 2112 : 2003
8.	6500004091	20150410	M/s. N.N. Varanavasi Gounder Jewellery 12, Ponn Street, Erode-638 001	Silver and Silver Alloys, Jewellery/Artefacts- Fineness and Marking	IS 2112 : 2003
9.	6500004394	20150415	M/s. Flow Staar Pumps No. 66, Elango Nagar Avarampalayam, Ganapathy Post, Coimbatore-641 006	Centrifugal Regenerative Pumps for clear, cold water	IS 8472 : 1998
10.	6500005093	20150415	M/s. Vel Pumpsets 66A & 67A, Athipalayam Road, Ganapathy Coimbatore-641 006.	Submersible Pumpsets	IS 8034 : 2002
11.	6500004903	20150415	M/s. Vel Pumpsets 66A & 67A, Athipalayam Road, Ganapathy, Coimbatore-641 006.	Motors for Submersible Pumpsets	IS 9283 : 2013
12.	6500004495	20150416	M/s. Velmurugan Minerals 197-C, Anaipudur, Thirumurugan Poondi, Covai Main Road, Avinashi Taluk, Tiruppur-641 652	Packaged Drinking Water (other than Packaged Natural Mineral Water)	IS 14543 : 2004
13.	6500004697	20150416	M/s. Raintree Beverages No.6/154-D, Kuppuchipalayam, Allalapuram Road, Karaipudur Village, Veerapandi Post, Tirupur-641 605	Packaged Drinking Water (other than Packaged Natural Mineral Water)	IS 14543 : 2004
14.	6500004596	20150416	M/s. Lalithaa Jewellery Mart Pvt. Ltd. 564, Oppanakara Street, Coimbatore-641 001	Gold and Gold Alloys, Jewellery/Artefacts- Fineness and Marking	IS 1417 : 1999
15.	6500004798	20150417	M/s. Nagurathna Industries SF No. 399, Veerabathram Thundu	Packaged Drinking Water (other than Packaged	IS 14543 : 2004

(1)	(2)	(3)	(4)	(5)	(6)
			Thottam, Sevanthampalayam, Tirupur-641 606	Natural Mineral Water)	
16.	6500005194	20150420	M/s. Elgi Ultra Industries Ltd. SF 95/1B, Avinashi Road, Thenampalayam, Arasur (P.O.) Coimbatore-641 407	Irrigation Equipment- Sprinkler Pipes - Part 1: Polyethylene Pipes	IS 14151 (Part 1) : 1999
17.	6500004899	20150420	M/s. Sree Rengaraj Ispat Industries Pvt. Ltd., Plot No. MM1,2,4,5, SIPCOT Industrial Growth Centre, Perundurai, Erode-638 052	Carbon Steel Cast Billet Ingots, Billets, Blooms and Slabs for re-rolling into Steel for general Structural purposes	IS 2830: 2012
18.	6500005295	20150427	M/s. Krish Tex SF No. 255, Naalu Kaal Thottam, Behind Rakkachi Garden, Maniyakaranpalayam, Ganapathy, Coimbatore-641006.	Openwell Submersible Pumpsets	IS 14220: 1994

[No. CMD/13:11]

M.SADASIVAM, Scientist 'F' &amp; Head

नई दिल्ली, 30 अप्रैल, 2015

**का.आ. 912.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम 5 के उपविनियम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शाई गई तारीख से रद्द/स्थगित कर दिया गया है:—**

**अनुसूची**

क्र०	लाइसेंस सं सं	लाइसेंसधारी का नाम व पता	स्थगित किए गए/ रद्द किए गए लाइसेंस के अंतर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक	रद्द होने की तिथि
1.	6849496	मेसर्स जोगेता प्लास्टिक पाइप्स 274, विलन्कुरिची रोड, विलन्कुरिची पोस्ट, कोयम्बत्तूर-641035	पेयजल आपूर्ति के लिए उच्च घनत्व वाले पॉलीएथिलीन पाइप्स IS 4984: 1995	21/04/2015

[सं. सी एम डी/13:13]

एम् सदाशिवम्, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 30th April, 2015

**S.O. 912.—In pursuance of sub-regulation (6) of the regulation 5 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies that the licence particulars of which are given below have been cancelled/suspended with effect from the date indicated against each:**

**SCHEDULE**

Sl. No.	Licence No. CM/L-	Name & Address of the Licensee	Article/Process with relevant Indian Standard covered by the licence cancelled/suspension	Date of Cancellation
1.	6849496	M/s. Joegeetha Plastic Pipes 274, VILANKURICHI ROAD, VILANKURICHI (P.O.) COIMBATORE-641035	High Density Polyethylene pipes for potable water supplies IS 4984: 1995	21/04/2015

[No. CMD/13:13]

M. SADASIVAM, Scientist 'F' &amp; Head

वित्त मंत्रालय  
(राजस्व विभाग)  
(केन्द्रीय प्रत्यक्ष कर बोर्ड)  
नई दिल्ली, 8 मई, 2015  
(आयकर)

**का.आ. 913.**—जबकि केन्द्र सरकार ने आयकर अधिनियम, 1961 (1961 का 43) (जिसे इसमें इसके बाद में उक्त अधिनियम कहा गया है) की धारा 80-झक की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत सरकार की अधिसूचना संख्या का०आ० 50 (अ) दिनांक 8 जनवरी, 2008 जिसे बाद में अधिसूचना सं० का०आ० 1605 (अ) दिनांक 2 जुलाई, 2008 और अधिसूचना सं० का०आ० 1210 (अ) दिनांक 21 मई, 2010 के तहत संशोधित किया गया है, के द्वारा औद्योगिक पार्क के लिए एक स्कीम तैयार व अधिसूचित की है;

और जबकि मैसर्स दोस्ती कॉर्पोरेशन (पिनेकल), जिसका पंजीकृत कार्यालय पता लॉरेंस एंड मेयो हाउस, प्रथम तल, 276, डॉ० एन० रोड, फोर्ट मुंबई में स्थित है, प्लॉट संख्या ई-7 एमआईडीसी रोड नं० 22 वागले औद्योगिक क्षेत्र, पंचपखड़ी थाने (पश्चिम), मुंबई में स्थित “दोस्ती पिनेकल” नामक एक औद्योगिक पार्क विकसित कर रहा है।

अतः अब उक्त अधिनियम की धारा 80-झक की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतदद्वारा इस अधिसूचना के अनुबंध में उल्लिखित शर्तों एवं निबंधनों के अधीन उक्त खंड (iii) के प्रयोजनार्थ मैसर्स दोस्ती कॉर्पोरेशन (पिनेकल) द्वारा विकसित तथा अनुरक्षित और प्रचालित किए जा रहे प्लॉट संख्या ई-7, एम आईडीसी, रोड नं० 22 वागले औद्योगिक क्षेत्र, पंचपखड़ी थाने (पश्चिम), मुंबई में स्थित “दोस्ती पिनेकल” नामक उपक्रम को इसके प्रारंभ होने की तारीख अर्थात् 29.03.2011 से एक उपक्रम और परियोजना के रूप में अधिसूचित करती है।

#### अनुबंध

वे शर्तें और निबंधन जिन पर मैसर्स रूपा इंफोटेक एंड इंफ्रास्ट्रक्चर लिमिटेड, नई दिल्ली द्वारा एक औद्योगिक पार्क की स्थापना के लिए भारत सरकार का अनुमोदन प्रदान किया गया है।

- (i) औद्योगिक उपक्रम का नाम मैसर्स दोस्ती कॉर्पोरेशन (पिनेकल), मुंबई
- (ii) प्रस्तावित अवस्थान ई-7, एमआईडीसी, रोड नं० 22 वागले औद्योगिक क्षेत्र पंचपखड़ी थाने (पश्चिम), मुंबई में स्थित “दोस्ती पिनेकल” नामक एक औद्योगिक पार्क विकसित कर रहा है

- (iii) निर्मित न्यूनतम फर्शी क्षेत्र 15,000 वर्ग मीटर
- (iv) प्रस्तावित औद्योगिक कार्यकलाप जैसा कि औद्योगिक पार्क स्कीम, 2008 में परिभाषित है
- (v) औद्योगिक उपयोग के लिए निर्धारित आबंटन 75 प्रतिशत अथवा उससे अधिक योग्य क्षेत्रफल की प्रतिशतता
- (vi) वाणिज्यिक उपयोग के लिए निर्धारित आबंटन 10 प्रतिशत अथवा उससे कम योग्य क्षेत्रफल की प्रतिशतता
- (vii) औद्योगिक इकाइयों की न्यूनतम संख्या 30 इकाइयां
- (viii) औद्योगिक पार्क के प्रारंभ होने की तिथि 29.03.2011

2. औद्योगिक पार्क को उपक्रम द्वारा प्रस्तुत और नवी मुम्बई नगर निगम द्वारा जारी प्रमाणपत्र में यथा उल्लिखित प्रारंभ होने की तारीख अर्थात् 29.03.2011 को विकसित हुआ माना जाएगा।

3. औद्योगिक पार्क का स्वामी एक ही उपक्रम होना चाहिए।

4. अधिनियम के अन्तर्गत उपक्रम को कर लाभ औद्योगिक पार्क में न्यूनतम तीस यूनिटों के अवस्थापित होने के बाद ही उपलब्ध होगा। औद्योगिक यूनिटों की न्यूनतम संख्या की संगणना के लिए किसी व्यक्ति तथा उसके संबद्ध उद्यमों की सभी उद्यमों को एक इकाई माना जाएगा।

5. संबद्ध उद्यम की इकाइयों सहित कोई भी औद्योगिक इकाई आबंटन योग्य क्षेत्रफल के पञ्चीस प्रतिशत से अधिक जगह नहीं घेरेगी।

6. अधिनियम के अन्तर्गत कर लाभ इस अधिसूचना के तहत अधिसूचित उपक्रम को ही उपलब्ध होगा न कि किसी अन्य व्यक्ति को जो बाद में किसी भी कारणवश अधिसूचित औद्योगिक पार्क विकसित करे, या विकसित तथा प्रचालन करता है अथवा अनुरक्षण तथा प्रचालित करता है।

7. उपक्रम अन्य शर्तों को पूरा किए जाने के अधीन इस अधिसूचना में उल्लिखित औद्योगिक पार्क के प्रारंभ होने की तारीख के संगत कर-निर्धारण वर्ष से शुरू होने वाले पंद्रह वर्षों में से किसी निरंतर दस वर्षों के लिए आयकर अधिनियम, 1961 की धारा 80-झक 4(iii) के तहत अपने विकल्प पर कटौती का दावा कर सकता है।

8. औद्योगिक पार्क में स्थित औद्योगिक इकाइयां केवल वहीं कार्यकलाप करेंगी जिन्हें औद्योगिक पार्क स्कीम, 2008 में विनिर्दिष्ट किया गया है।

9. उपक्रम को औद्योगिक पार्क के लिए अलग खाता-बही रखेगा तथा नियत तिथि तक आयकर विभाग को अपनी आयकर विवरणी दाखिल करेगा।

10. यह अधिसूचना तब अमान्य हो जाएगी तथा मैसर्स दोस्ती कॉरपोरेशन (पिनेकल) ऐसी अमान्यता की किसी अप्रत्यक्ष परिणामों के लिए पूरी तरह उत्तरदायी होगा, यदि

- (i) आवेदन जिसके आधार पर केन्द्र सरकार द्वारा स्वीकृति दी गई है, में गलत सूचना/मिथ्या जानकारी पाई जाती है अथवा कुछ वस्तुगत सूचना इसमें नहीं दी गई है,
- (ii) यह औद्योगिक पार्क के अवस्थान के लिए है जिसके लिए किसी अन्य उपक्रम के नाम पर पहले ही स्वीकृति जारी की जा चुकी है।

11. उपक्रम प्रपत्र आईपीएस-II में एक वार्षिक रिपोर्ट केन्द्रीय प्रत्यक्ष कर बोर्ड को प्रस्तुत करेगा।

12. इस अधिसूचना में उल्लिखित शर्तों के साथ-साथ औद्योगिक पार्क स्कीम, 2008 में शामिल शर्तों का उस अवधि के दौरान पालन किया जाना चाहिए जिसके लिए इस स्कीम के अन्तर्गत लाभ उठाए जाने हैं। केन्द्र सरकार उपर्युक्त स्वीकृति को वापस ले सकती है, यदि उपक्रम किसी भी शर्तों का पालन करने में असमर्थ रहता है।

13. केन्द्र सरकार की स्वीकृति के बिना परियोजना प्लान में किसी संशोधन अथवा भविष्य में पता चलने अथवा आवेदक की ओर से किसी वस्तुगत तथ्य को प्रकट करने में असमर्थता के कारण औद्योगिक पार्क की स्वीकृति अमान्य हो जाएगी।

[अधिसूचना सं. 44/2015/फा० सं० 178/06/2011—आकनि-1)]

दीपशिखा शर्मा, निदेशक

**MINISTRY OF FINANCE  
(Department of Revenue)  
(CENTRAL BOARD OF DIRECT TAXES)**  
New Delhi, the 8th May, 2015  
**(INCOME-TAX)**

**S.O. 913.**—Whereas the Central Government in exercise of the powers conferred by clause(iii) of sub-section (4) of section 80-IA of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the said Act), has framed and notified a scheme for industrial park, by the notifications of the Government of India *vide* number S.O. 50 (E), dated the 8th January, 2008 subsequently amended *vide* Notification No. S.O. 1605 (E), dated 2nd July 2008 and *vide* Notification S.O. No. 1210 (E) dated 21.5.2010.

And whereas M/s. Dosti Corporation (Pinnacle) having its registered office at Lawrence & Mayo House, 1st Floor 276, Dr. D.N. Road, Fort, Mumbai is developing an Industrial Park named "Dosti Pinnacle" placed at plot No. E-7, MIDC,

Road No.22, Wagle Industrial Area, Panchpakhdi, Thane (West), Maharashtra.

Now, therefore, in exercise of the powers conferred by clause (iii) of sub-section (4) of section 80-IA of the said Act, the Central Government hereby notifies the undertaking from the date of commencement *i.e.* 29.03.2011, being developed and being maintained and operated by M/s. Dosti Corporation (Pinnacle), as an undertaking and the project named "Dosti Pinnacle" placed at Plot No. E-7, MIDC, Road No.22, Wagle Industrial Area, Panchpakhdi, Thane (West), Maharashtra for the purposes of the said clause (iii) subject to the terms and conditions mentioned in the Annexure of the notification.

#### ANNEXURE

The terms and conditions on which the approval of the Government of India has been accorded for setting up of an industrial park by M/s. Dosti Corporation (Pinnacle), Mumbai.

- (i) Name of the Industrial : Dosti Corporation (Pinnacle), Mumbai
- (ii) Proposed location : E-7 MIDC, Road No.22, Wagle Industrial Area, Panchpakhdi, Thane (West), Maharashtra
- (iii) Minimum Constructed : 15,000 square meters.  
Floor Area
- (iv) Proposed industrial : As defined in Industrial activities Park Scheme, 2008
- (v) Percentage of allocable : 75% or more area earmarked for Industrial use
- (vi) Percentage of allocable : 10% or less area earmarked for commercial use
- (vii) Minimum number of : 30 Units industrial Units
- (viii) Date of commencement : 29.03.2011

2. The Industrial Park shall be construed as developed on the date of commencement *i.e.* 29.03.2011 as mentioned in the Certificate furnished by the undertaking and issued by the Maharashtra Industrial Development Corporation, Thane.

3. The Industrial Park should be owned by one undertaking.

4. The tax benefits under the act will be available to the undertaking only after minimum number of thirty industrial units are located in the Industrial Park. For the purpose of

computing the minimum number of industrial units, all units of a person and his associated enterprises will be treated as a single unit.

5. No industrial unit, alongwith the units of an associated enterprise, shall occupy more than twenty five percent of the allocable area.

6. The tax benefits under the Act will be available only to the undertaking notified vide this notification and not to any other person who may subsequently develop, develops and operates or maintains and operates the notified industrial park, for any person.

7. The undertaking subject to the fulfillment of other conditions, may at its option claim deduction under section 801A (4)(iii) of the Income tax Act, 1961 for any ten consecutive assessment years out of fifteen years beginning from the assessment year relevant to the date of commencement of industrial part mentioned in this notification.

8. The Industrial units located in the industrial park shall undertake only those activities as specified in Industrial Park Scheme, 2008.

9. The undertaking must keep separate books of accounts for the industrial park and must file its income tax returns by the due date to the income-tax department.

10. The notification will be invalid and Dosti Corporation (Pinnacle), Mumbai shall be solely responsible for any repercussions of such invalidity, if

- (i) the application on the basis of which the approval is accorded by the Central Government contains wrong information/misinformation or some material information has not been provided in it.
- (ii) it is for the location of the industrial park for which approval has already been accorded in the name of another undertaking.

11. The undertaking shall furnish an annual report to the Central Board of Direct Taxes in Form IPS-II.

12. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2008 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case the undertaking, fails to comply with any of the conditions.

13. Any amendment of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the industrial park.

[Notification No. 44/2015/F.No. 178/06/2011-ITA-I]

DEEPSHIKHA SHARMA, Director

### विज्ञान एवं प्रौद्योगिकी विभाग

नई दिल्ली, 1 मई, 2015

**का.आ.** 914.—श्री चित्रा तिरुनाल आयुर्विज्ञान और प्रौद्योगिकी संस्थान, त्रिवेन्द्रम अधिनियम, 1980 (1980 की संख्या 52) की धारा-6 की उपधारा (1) और (2) के साथ पटित धारा-5 के उप-धारा (जे) के प्रावधानों के अनुसार, लोक सभा के निम्नलिखित दो सदस्यों का निर्वाचन, संस्थान के निकाय के सदस्यों के रूप में किया गया है:—

क्रम सं.	सदस्यों का नाम	निर्वाचन की तारीख
1.	डॉ. प्रीतम गोपीनाथ मुन्डे	18.03.2015
2.	श्री एन् के० प्रेमचन्द्रन	18.03.2015

2. उपर्युक्त निर्वाचित सदस्यों की पदावधि, उनका निर्वाचन किए जाने की तारीख से पांच वर्षों अथवा उनके सदन की सदस्यता समाप्त होने अथवा उनके लोक सभा के अध्यक्ष या उपाध्यक्ष अथवा मंत्री बनने, इनमें से जो भी पहले होगा, तक होगी।

3. उपर्युक्त सदस्यों की सदस्यता की चित्रा तिरुनाल आयुर्विज्ञान और प्रौद्योगिकी संस्थान, त्रिवेन्द्रम अधिनियम, 1980 के अन्य प्रावधानों के अध्यधीन होगी।

[सं. एआई/एससीटी/08/2004]

बी० एस० रावत, निदेशक

### DEPARTMENT OF SCIENCE AND TECHNOLOGY

New Delhi, the 1st May, 2015

**S.O.** 914.—In terms of the provisions of Sub-section (j) of Section 5 read with Sub section (1) and (2) of Section 6 of the Sree Chitra Tirunal Institute of Medical Sciences and Technology, Trivandrum Act, 1980 (No. 52 of 1980), the following two members of Lok Sabha have been declared duly elected to serve as Members of the said Institute:

Sl.No.	Name of Members	Date of Election
1.	Dr. Pritam Gopinath Munde	18.03.2015
2.	Shri N.K. Premachandran	18.03.2015

2. The term of Office of the above elected members shall be five years from the date of election and the same shall come to an end as soon as they cease to be Members of the House, or they become Speaker or Deputy Speaker of House of the People, or a Minister, whichever is the earliest.

3. The Membership of the above Members shall be subject to other provisions of Sree Chitra Tirunal Institute of Medical Sciences and Technology, Trivandrum Act, 1980.

[No. AI/SCT/08/2004]

B.S. RAWAT, Director

## नागर विमानन मंत्रालय

(ए ए आई अनुभाग)

नई दिल्ली, 5 मई, 2015

**का.आ. 915.**—केन्द्रीय सरकार भारतीय विमानपत्तन प्राधिकरण अधिनियम, 1994 (1994 का सं° 55) की धारा 3 में प्रदत्त शक्तियों का प्रयोग करते हुए नागर विमानन मंत्रालय के निम्नलिखित अधिकारियों को तत्काल प्रभाव से भारतीय विमानपत्तन प्राधिकरण के मंडल में नियुक्त करती हैः—

1. श्रीमती एम° सत्यावती, नागर विमानन महानिदेशक को श्री प्रभात कुमार (पूर्व नागर विमानन महानिदेशक) के स्थान पर पदेन सदस्य को रूप में; तथा
2. सुश्री गार्गी कौल, संयुक्त सचिव एवं वित्तीय सलाहकार, नागर विमानन मंत्रालय को श्रीमती एम° सत्यावती, पूर्व अपर सचिव एवं वित्तीय सलाहकार, नागर विमानन मंत्रालय के स्थान पर अंशकालिक सदस्य के रूप में।

[सं° ए° वी° 24015/2/2015-एएआई-एमओसीए]

के° वी° उन्नीकृष्णन, अवर सचिव

## MINISTRY OF CIVIL AVIATION

(AAI SECTION)

New Delhi, 5th May, 2015

**S.O. 915.**—In exercise of the powers conferred under Section 3 of the Airports Authority of India Act, 1994 (No. 55 of 1994), the Central Government hereby appoints following Officers of Ministry of Civil Aviation on the Board of Airports Authority of India with immediate effect:

1. Smt. M. Sathiyavathy, Director General of Civil Aviation as Ex-officio Member vice Shri Prabhat Kumar (Ex-DGCA); and
2. Ms. Gargi Kaul, Joint Secretary and Financial Adviser, Ministry of Civil Aviation as part-time Member vice Smt. M. Sathiyavathy, former AS&FA, Ministry of Civil Aviation.

[No. AV. 24015/2/2015-AAI-MoCA]

K. V. UNNIKRISHNAN, Under Secy.

कार्यालय प्रधान महालेखाकार  
(सामान्य एवं सामाजिक क्षेत्र लेखापरीक्षा)  
तमिलनाडु एवं पुदुचेरी,  
सेवा समाप्ति की सूचना  
चेन्नै, 17 नवम्बर, 2014

कार्यालय प्रधान महालेखाकार (सां° एवं सांक्षेष्योप्त), चेन्नई 18 के श्री शुभम दास, अस्थाई लेखापरीक्षक के संबंध में उनके अंतिम ज्ञात पतों पर नई दिल्ली/आगरा को पंजीकृत डाक द्वारा पावती देय प्रेषित की गई सेवा समाप्ति की सूचना, “ऐसा कोई व्यक्ति नहीं” टिप्पणी के साथ वितरित किये बिना लौटा दी गई थी। अतः कॅंसिल्यॉ (अ०से°) नियम, 1965 के नियम 5(1) के प्रावधानों के अनुसार सेवा समाप्ति की सूचना सरकारी राजपत्र में एतद्वारा अधिसूचित की जाती है।

**का.आ. 916.**—केन्द्रीय सिविल सेवाएं (अस्थाई सेवा) नियम 1965 के नियम 5 के उपनियम (1) के अनुसरण में, मैं, एतद्वारा, श्री शुभम दास, अस्थाई लेखापरीक्षक को सूचना देता हूं कि इस नोटिस के उनको प्रदान होने की तारीख या/उनको प्रस्तुत होने की तारीख, जो भी मामला हो, से एक महीने की अवधि समाप्त होने की तारीख से उनकी सेवाएं समाप्त मानी जाएगी।

दिनांक 17.11.2014

[सं° प्र म ले (सां° एवं सां क्षे० ले० प०) प्रशासन III/  
2014-15/361]के° शंकर, उप महालेखाकार (प्रशासन) एवं  
नियुक्ति प्राधिकारी

श्री शुभम दास, लेखापरीक्षक

सं° 2, ब्रिज एन्कलेव, न्यू सरस्वती नगर,

बालकेश्वर, आगरा उत्तर प्रदेश,

पिनकोड 282 004

श्री शुभम दास,

लेखापरीक्षक,

2/53, रमेश नगर,

नई दिल्ली-110 011

OFFICE OF THE PRINCIPAL ACCOUNTANT  
GENERAL (G & SSA),  
TAMILNADU AND PUDUCHERRY,  
NOTICE OF TERMINATION OF SERVICE

Chennai, the 17th November, 2014

The notice of termination in respect of Shri Shubham Das, Temporary Auditor of Office of Principal Accountant General (G & SSA), Chennai 18 was dispatched to his last known addresses at New Delhi/Agra by Registered post Ack Due and the same were returned undelivered with the remarks "no such person". Hence the notice of termination is hereby notified in the official Gazette as per the provisions of Rule 5(1) of CCS (TS) Rules, 1965.

**S.O. 916.**—In pursuance of sub-rule (1) of rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I, the undersigned, hereby give notice to Shri Shubham Das, Temporary Auditor that his services shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on or, as the case may be, tendered to him.

[No. PAG (G&amp;SSA)Admn.III/2014-15/361]

K. SANKAR, Dy. Accountant General (Admn.)  
and Appointing Authority

Station:

Dt. 17.11.2014

Shri Shubham Das,

Auditor,

No. 2, Brij Enclave,

New Saraswathi Nagar,

Balkeshwar, Agra,

Uttar Praesh,

Pin 282 004

Shri Shubham Das,

Auditor,

2/53, Ramesh Nagar,

New Delhi-110011.

## श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 27 अप्रैल, 2015

**का.आ. 917.**—राष्ट्रपति, केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, नागपुर के रिक्त पद हेतु लिंक अधिकारी के रूप में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नं० 1, दिल्ली के पीठासीन अधिकारी श्री ए० सी० डोगरा को तीन माह की अवधि तक अथवा नियमित पदधारण की नियुक्ति होने तक, इनमें से जो भी पहले हो तब तक के लिए अतिरिक्त कार्यभार सौंपते हैं।

[सं० ए-11016/03/2009-सीएलएस-II]

एस० के० सिंह, अवर सचिव

## MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 27th April, 2015

**S.O. 917.**—The President is pleased to entrust the additional charge of the Post of Presiding Officer of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur to Shri A.C. Dogra Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, No. 1, New Delhi for a period of three months or till the post is filled on regular basis whichever is earlier.

[No.A-11016/03/2009-CLS-II]

S. K. SINGH, Under Secy.

नई दिल्ली, 27 अप्रैल, 2015

**का.आ. 918.**—राष्ट्रपति, केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नं० 2, मुम्बई के रिक्त पद हेतु लिंक अधिकारी के रूप में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नं० 1, मुम्बई के पीठासीन अधिकारी श्री सत्य पूर्ण महरोत्रा को तीन माह की अवधि तक अथवा नियमित पदधारण की नियुक्ति होने तक, इनमें से जो भी पहले हो तब तक के लिए अतिरिक्त कार्यभार सौंपते हैं।

[सं० ए-11016/03/2009-सीएलएस-II]

एस० के० सिंह, अवर सचिव

New Delhi, the 27th April, 2015

**S.O. 918.**—The President is pleased to entrust the additional charge of the post of Presiding Officer of the Central Government Industrial Tribunal-cum-Labour Court, Mumbai-II to Shri Satya Poot Mehrotra Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Mumbai-I for a period of three months or till the post is filled on regular basis whichever is earlier.

[No.A-11016/03/2009-CLS-II]

S. K. SINGH, Under Secy.

नई दिल्ली, 29 अप्रैल, 2015

**का.आ. 919.**—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सीएमपीडीआईएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-श्रम न्यायालय, नं० 1, धनबाद के पंचाट (संदर्भ संख्या 1/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/4/2015 को प्राप्त हुआ था।

[सं० एल-20012/355/1991-आईआर (सी-I)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 29th April, 2015

**S.O. 919.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1/93) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the ANNEXURE, in the industrial dispute between the management of M/s. CMPDIL and their workmen, received by the Central Government on 29/04/2015.

[No. L-20012/355/1991-IR (C-I)]

M.K SINGH, Section Officer

## ANNEXURE

BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL NO.1, DHANBAD

## Reference: No. 01/1993

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act.  
1947

## Parties:

Employer in relation to the management  
of C M.P.D.I.L. Ranchi

AND

Their workmen

## Present :

Sri R.K. Saran, Presiding Officer

## Appearances :

For the Employers : Shri B.K. Sinha, Manager (P)

For the Workman. : None.

State : Jharkhand

Industry : Coal

Date: 1/4/2015

## AWARD

By order No. L-20012/355/91-IR (C-I) dated 04/01/1993  
the Central Government in the Ministry of Labour has, in

exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

#### SCHEDULE

"Whether the action of the management of M/s Central Mine & Planning & Design Institute Ltd. Ranchi in terminating the service of Sri Galua Gope from December, 1988 (Specified date is not given by the union/ Management) after employing continuously from 6/1/83 and retaining the services of junior workman is justified? If not, to what relief the workman is entitled and from what date?"

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently by the workman. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence, No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 29 अप्रैल, 2015

**का.आ. 920.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण श्रम न्यायालय, नं 1, धनबाद के पंचाट (संदर्भ संख्या 05/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/04/2015 प्राप्त हुआ था।

[सं एल-20012/210/1991-आईआर (सी-1)]

एम् के० सिंह, अनुभाग अधिकारी

New Delhi, the 29th April, 2015

**S.O. 920.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 05/93) of the Cent. Govt. Indus.Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the ANNEXURE, in the industrial dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 29/04/2015.

[No. L-20012/210/1991-IR (C-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

**Reference: No. 05/1993**

In the matter of reference U/S 10 (1) (d) (2A) of  
I.D. Act, 1947

#### Parties:

Employer in relation to the management of Balihari  
Colliery of M/S BCCL

AND

Their workmen

#### Present :

Sri R.K. Saran, Presiding Officer

#### Appearances:

For the Employers : Shri N.M. Kumar, Advocate

For the Workman. : None.

State : Jharkhand

Industry Coal

Date: 10/3/2015

#### AWARD

By order No. L-20012/210/91-IR (C-I) dated 17/12/1992 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

#### SCHEDULE

"Whether the date of Birth of Shri Bal Krishna Prasad, Machanical Fitter in Balihari Colliery of M/s MCCl should be treated as 05.01.38 as claimed by him or whether it should be treated as 11.11.1930, as recorded by the management.

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently by the workman. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence, No Dispute Award is passed. Communicate.

R.K. SARAN, Presiding Officer

नई दिल्ली, 29 अप्रैल, 2015

**का.आ. 921.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण, में केन्द्रीय सरकार बी० सी० एल० के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, नं 1, धनबाद के पंचाट (संदर्भ संख्या 37/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/04/2015 को प्राप्त हुआ था।

[सं एल-20012/340/1991-आईआर (सी-1)]

एम् के० सिंह, अनुभाग अधिकारी

New Delhi, the 29th April, 2015

**S.O. 921.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 37/93) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the ANNEXURE, in the industrial dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 29/04/2015.

[No. L-20012/340/1991-IR (C-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

Reference : No. 37/1993

In the matter of reference U/S 10 (1) (d) (2A) of  
I.D. Act, 1947

**Parties:** Employer in relation to the management of  
Munidih Project M/S BCCL

AND

Their workmen

#### Present:

Sri R. K. Saran, Presiding Officer

#### Appearances :

For the Employers : Shri D.K. Verma, Advocate

For the Workman. : None.

State : Jharkhand.

Industry Coal

Date: 11/3/2015

#### AWARD

By order No. L-20012/340/91-IR (C-I) dated 04/01/1993 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

#### SCHEDULE

"Whether the action of the management of Moonidih Project of M/S BCCL, P.O Moonidih, Dist-Dhanbad in not paying wages to C.K. Tigga and 9 others at per with Rajendra Ram and B.N. Rai with effect from the date of their promotion to Category-V is justified? If not, to what relief the concerned workman are entitled?"

#### ANNEXURE

#### LIST OF WORKMEN

1. Shri S. N. Sharma
2. Shri Rajeshwari Pd. Singh
3. Shri Baleshwar Pd. Singh
4. Shri Rajnath Singh
5. Shri Baban Choubey
6. Shri R.K. Mondal
7. Shri Bipin Kumar Singh
8. Shri Ramacharitra Paswan
9. Shri A.N. Bihari

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently by the workman. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R.K. SARAN, Presiding Officer

नई दिल्ली, 29 अप्रैल, 2015

**का.आ. 922.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं 1, धनबाद के पंचाट (संदर्भ संख्या 21/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/04/2015 को प्राप्त हुआ था।

[सं. एल-20012/393/1991-आईआर (सी-1)]

एम् के० सिंह, अनुभाग अधिकारी

New Delhi, the 29th April, 2015

**S.O. 922.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/93) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the ANNEXURE, in the industrial dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 29/04/2015.

[No. L-20012/393/1991-IR (C-I)]

M. K. SINGH, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL  
NO. 1, DHANBAD**

**Reference: No. 21/1993**

In the matter of reference U/S 10 (1) (d) (2A) of  
I.D. Act, 1947

**Parties:** Employer in relation to the management of  
Alkusa Colliery, M/S BCCL

**AND**

Their workmen.

**Present:** Sri R.K. Saran,  
Presiding Officer

**Appearances:**

For the Employers : Shri U.N. Lall, Advocate

For the Workman. : None.

State : Jharkhand.

Industry : Coal

Date: 6/4/2015

**AWARD**

By order No. L-20012/393/91-IR (C-I) dated 05/01/1993 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

**SCHEDULE**

"Whether the workmen S/Shri M.N. Singh, J.N. Banerjee, Amulya Bhatta charjee, Dinanath Singh and Ramphar Pasi are entitled for promotion as safety-cum-production Assistant Tech, Grade-'B' with effect from 01/06/1998? If not, to what relief the workmen are entitled and what date?"

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently by the workman. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R.K. SARAN, Presiding Officer

नई दिल्ली, 29 अप्रैल, 2015

**का.आ. 923.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टिस्को के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट

ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं 1, धनबाद के पंचाट (संदर्भ संख्या 32/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/04/2015 को प्राप्त हुआ था।

[सं. एल-20012/391/1991-आईआर (सी-1)]

एम् के० सिंह, अनुभाग अधिकारी

New Delhi, the 29th April, 2015

**S.O. 923.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/93) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the ANNEXURE, in the industrial dispute between the management of M/s. TISCO and their workmen, received by the Central Government on 29/04/2015.

[No. L-20012/391/1991-IR (C-I)]

M.K SINGH, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

**Reference: No. 32/1993**

In the matter of reference U/S 10 (1) (d) (2A) of  
I.D. Act., 1947.

**Parties :** Employer in relation to the Management of 6  
& 7 Pits of M/S TISCO

**AND**

Their Workmen.

**Present:** Sir R.K. Saran,  
Presiding Officer

**Appearances :**

For the Employers : Shri D.K. Verma, Advocate

For the Workman : None.

State : Jharkhand.

Industry : Coal

Date: 20/3/2015

**AWARD**

By order No. L-20012/391/91-IR (C-I) dated 04/01/1993 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

**SCHEDULE**

"Whether the action of the management of Jamadoba 6  
& 7 Pits Colliery of M/s. TISCO in treating the  
employment of Shri H.L. Acharya w.e.f. 15.10.63 as

dependant and on the strength of the service of Shri H.P. Acharya, Sr. Overman is justified? If not, whether any more dependant of Shri H.P. Acharya is entitled for employment with the management as he has rendered more than 40 years of service before superannuating in 1988?"

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently by the workman. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed, Communicate.

R.K. SARAN, Presiding Officer

नई दिल्ली, 29 अप्रैल, 2015

**का.आ. 924.—**औद्योगिकी विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ईसीएल के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं 1, धनबाद के पंचाट (संदर्भ संख्या 132/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/04/2015 को प्राप्त हुआ था।

[सं. एल-20012/81/1999-आईआर (सी-1)]

एम् के० सिंह, अनुभाग अधिकारी

New Delhi, the 29th April, 2015

**S.O. 924.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the Award (Ref. No. 132/99) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the ANNEXURE, in the Industrial dispute between the management of M/s. ECL and their workmen, received by the Central Government on 29/04/2015.

[No. L-20012/81/1999-IR (C-I)]

M.K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

##### Reference: No. 132/1999

In the matter of reference U/S 10 (1) (d) (2A) of  
I.D. Act., 1947.

**Parties :** Employer in relation to the  
Management of Mugma Area of M/S ECL  
AND  
Their Workmen.

**Present :** Sir R.K. Saran  
Presiding Officer

#### Appearances:

For the Employers : Shri U.N. Lall, Advocate

For the Workman : Shri Rajgrahi Sah,

Concerned workman

State : Jharkhand. Industry — Coal

Dated 10/3/2015

#### AWARD

By order No. L-20012/81/99/IR (C-I) dated 04/06/1999 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

#### SCHEDULE

"Whether the action of the management of Mandman Colliery Under Mugma Area of ECL in not promoting Sri Rajgrahi Saw in 1989 from Clerical Grade II to Gr.-I, although junior workman Mr. Rambilash Singh was promoted in Gr.-I in 1996 is correct? if not what relief the workman is entitled to?"

2. This case is received from the Ministry on 15.06.1999. During the pendency of the case concerned workman files a petition for withdrawing the reference. He is submitting that our demand is fulfil. Now he was satisfied.

3. It is felt, dispute between parties is resoled. Hence "No dispute" award is passed, communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 29 अप्रैल, 2015

**का.आ. 925.—**औद्योगिकी विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ईसीएल के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं 1, धनबाद के पंचाट (संदर्भ संख्या 07/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/04/2015 को प्राप्त हुआ था।

[सं. एल-20012/252/1991-आईआर (सी-1)]

एम् के० सिंह, अनुभाग अधिकारी

New Delhi, the 29th April, 2015

**S.O. 925.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 07/93) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the ANNEXURE, in the Industrial dispute between the management of M/s. ECL and their workmen, received by the Central Government on 29/04/2015.

[No. L-20012/252/1991-IR(C-I)]

M. K. SINGH, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL NO.1, DHANBAD****Reference: No. 07/1993**

In the matter of reference U/S 10 (1) (d) (2A) of  
I.D. Act., 1947.

**Parties:** Employer in relation to the Management of  
Rajpura Colliery of M/S ECL  
AND  
Their Workmen.

**Present:** Sri R.K. Saran,  
Presiding Officer.

**Appearances:**

For the Employers : Shri D.K. Verma, Advocate

For the Workman : None.

State : Jharkhand Industry — Coal  
Dated 12/3/2015

**AWARD**

By order No. L-20012/252/91/IR (C-I) dated 16/12/1992  
the central Government in the Ministry of Labour has, in  
exercise of the powers conferred by clause (d) of sub-  
section (1) and sub-section (2A) of section 10 of the  
Industrial Disputes Act, 1947 referred the following dispute  
for adjudication to this Tribunal:

**SCHEDULE**

"Whether the action of the management of M/s. Eastern  
Coalfields Ltd., Kapasara Area in relation to their Rajpura  
Colliery in not regularizing S/Shri Mintu Modak and 10  
others as Water Supplier is justified? If not, to what  
benefit the workmen concerned are entitled?

Sl.	Name	S/o	Vill	Post	Dist
1.	Mintu Modak	Shri Gorachand Modak	Rajpura	Kumardhubi,	Dhanbad
2.	Lagan Mahto	Shri Shambhu Mahto	Gopalpur	Nirsha	Dhanbad
3.	Mitan Rakhit	Shri Vagat Rakhit	Agarcoor	Kumardhubi	Dhanbad
4.	Gautam Rakhit	Shri Jagat Rakhit	Agarcoor	Kumardhubi	Dhanbad
5.	Ramrap Chauhan	Sri Ramkrishna Chauhan	Dihuri	Dihuri	Gaya
6.	Kisto Mahto	Shri Mahadev Mahto	Tiltoria	Kumardhubi	Dhanbad
7.	Sasti Mahto	Shri Basudeo Mahto	Tiltoria	Kumardhubi	Dhanbad
8.	Dhiran Rajwar	Shri Ghasi Rajwar	Tiltoria	Kumardhubi	Dhanbad
9.	Bideshi Rajwar	Shri Srikant Rajwar	Kalimoti	Kumardhubi	Dhanbad
10.	Amar Singh	Shri Surjeet Ram Singh	Rajpura	Kumardhubi	Dhanbad
11.	Dev Nandan Paswan	Shri Ramlal Paswan	Swalibari	Kumardhubi	Dhanbad

2. After receipt of the reference, both parties are noticed.  
But appearing for certain dates none appears subsequently  
by the workman. Case remain pending. It is felt that the  
dispute between the parties have been resolved in the  
meantime. Hence No Dispute Award is passed,  
Communicate.

R.K. SARAN, Presiding Officer

नई दिल्ली, 5 मई, 2015

**का.आ. 926.—**औद्योगिकी विवाद अधिनियम, 1947 (1947  
का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ  
इंडॉर मर्ज़ड विद भारतीय स्टेट बैंक प्रबंध तंत्र के संबद्ध नियोजकों और  
उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय

सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 48/98)  
को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/05/2015 को प्राप्त  
हुआ था।

[सं. एल-12012/165/97-आईआर (बी-1)]

सुमिति सकलानी, अनुभाग अधिकारी

New Delhi, the 5th May, 2015

**S.O. 926.—**In pursuance of Section 17 of the Industrial  
Disputes Act, 1947 (14 of 1947), the Central Government  
hereby publishes the Award (Ref. No. 48/98) of the Cent.  
Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as  
shown in the Annexure, in the Industrial dispute between

the management of State Bank of Indore Merged with State Bank of India and their workmen, received by the Central Government on 05/05/2015.

[No. L-12012/165/97-IR (B-1)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/48/98

Shri Sanjay Harishchand Khatke,  
through General Secretary,  
All India State Bank of Indore  
Employees Congress,  
Hardev Niwas,  
9, Sanwer Road, Ujjain. ....Workman/Union

*Versus*

Assistant General Manager,  
State Bank of Indore, Head Office,  
Indore  
(Merged with State Bank of India) ....Management

#### AWARD

Passed on this 17th day of April 2015

1. As per letter dated 9-3-90 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/165/97-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of State Bank of Indore in terminating the services of Shri Sanjay Harishchandra Khakte even after taking work of peon cum farrash continuously w.e.f. 17-6-91 to 3-6-93 is legal and justified? If not, to what relief the workman concerned is entitled for?"

2. After receiving reference, notices were issued to the parties. Statement of claim is filed by Union Secretary at Page 2/1 to 2/4. Case of 1st party Union is that he was engaged for cleaning, sweeping work by Branch Manager Shri Mundra. He was engaged on daily wages from 1-2-91. That he was working in the branch from 8 AM to 6 PM. He was paid wages from Monday to Saturday. After transfer of Branch Manager Shri Mundra, workman was called to work at Sanyogita branch Indore. That workman was working as peon in the branch after 10.30 till 6 PM. After transfer of Shri Mundra Branch Manager, Shri Sheikh has joined the branch. As per his directions, workman was submitting various kinds of bills. The payment orders were drawn and Branch Manager was paying the wages. His

services were terminated from 30-4-96 without notice. Workman had completed 240 days continuous services. Termination of his service without notice is illegal. The workman was not paid bonus. IIInd party has violated Section 25-F of ID Act. Para 504 of Sastry Award, compensation was not paid to him, after his termination, other employees were engaged 25 daily wage employee are still working in the Bank. On such contentions, workman prays for his reinstatement with back wages. Statement of claim is not signed by workman rather it is signed only by Shri Ram Nagwanshi.

IIInd party filed Written Statement at Page 9/1 to 9/8 opposing claim of workman. IIInd party has pleaded that statement of claim is not verified by Shri Sanjay Khakte. Such statement of claim is not tenable. Shri Sanjay Khatke was not member of the Union. The General Secretary is not authorized to represent the dispute. IIInd party submits that Managing Director of Bank is unnecessarily impleaded. The case suffers from misjoinder of parties. Union at Ujjain has no locus-standi to prosecute the claim from employees working at Indore. All adverse contentions of workman that he was engaged on 1991, he completed 240 days continuous service have been denied. It is denied that workman was continuously working. IIInd party denied violation of Section 23 of ID Act. It is denied that workman was terminated from service without paying 3 months pay. Workman was engaged at Yeshwant Road Branch or Sanyogita branch as per exigencies. The wages agreed were paid to them. On such ground, IIInd party prays for rejection of claim.

4. Workman has submitted rejoinder at Page 11/1 to 11/3 reiterating his contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of State Bank of Indore in terminating the services of Shri Sanjay Harishchandra Khakte even after taking work of peon cum farrash continuously w.e.f. 17-6-91 to 3-6-93 is legal and justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

#### REASONS

6. The reference order shows that the dispute was raised by All India State Bank of Indore employees Congress Union and not by the workman. Shri Ram Nagwanshi

claimed to be office bearer of the Union. Thus the statement of claim is submitted by Shri Ram Nagwanshi claiming to be General Secretary of the Union cannot be said proper. How daily wage employees submitted statement of claim is not explained when the dispute was raised by General Secretary, All India State Bank of Indore Employees Congress. Claim of workman is denied outright by the management.

7. Affidavit of evidence of workman was filed on 20-11-05. Again he filed affidavit of his evidence on 26-2-06 that he was working in the bank from February 93 to April 93 for 337 days. He worked more than 240 days. That he was working in Sanyogita branch, Indore from 1-5-93. The services were terminated from 30-4-96 without notice, without payment of retrenchment compensation. Workman in his cross says that he was introduced with the Branch manager on next day, he was told to join duties. Appointment letter was not given to him, he was paid wages Rs. 40/- per day. The bills in the name of Sharda Electrics were prepared. Workman says documents P-13 to P-44 were prepared by himself. Any order is not produced by him, he claims ignorance whether P-14 is from which register.

8. Management's witness Prahlad supported contention of IInd party managemnet denying that workman was continuously workig from 1-1-1990 to 30-4-96. That the workman Shri Sanjay Khatkar was engaged for sweeping, cleaning work in the branch for 1 hour morning and 1 hour evening. He was not continuouly working in Sanyogita branch or Y.N. Road branch during 1991 to 1993. The premision of Controlling Authority was not taken before engaging workman in the work. Name of workman is not recorded in Attendance Register. He claims ignorance who paid wages to the workman, he claims ignorance about notice for retrenchment or payment of compensation. The evidence of Ist party workman is self serving statement. His evidence shows that the bills in name of other persons were prepared by him. Any co-employee is not examined in support of his evidence. The documents produced by workman have been denied. Evidence of workman is not sufficient to establish that he was working more than 240 days in the Bank. Therefore workman is not entitled to protection of ID Act. For above reasons, I record my finding in Point No. 1 in Affirmative.

9. In the result, award is passed as under:—

- (1) The action of the management of State Bank of Indore in terminating the services of Shri Sanjay Harishchandra Khakte even after work of peon cum farrash continuously w.e.f. 17-6-91 to 3-6-93 is proper and legal.
- (2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 5 मई, 2015

**का.आ. 927.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंध तंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 47/04) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/05/2015 को प्राप्त हुआ था।

[सं. एल-12012/308/2003-आईआर (बी-1)]

सुमिति सकलानी, अनुभाग अधिकारी

New Delhi, the 5th May, 2015

**S.O. 927.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 47/04) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the ANNEXURE, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 05/05/2015.

[No. L-12012/308/2003-IR(B-1)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

#### NO. CGIT/LC/R/47/04

General Secretary,  
Daily Wages Bank Employees Association,  
Hardev Niwas, 9,  
Sanwar Road, Ujjain

Workman/Union

*Versus*

Asstt. General Manager,  
State Bank of India,  
Region-I, Zonal Office,  
Hamidia Road,  
Bhopal (MP)

Management

#### AWARD

Passed on this 21st day of April 2015

1. As per letter dated 27-4-04 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/308/2003-IR(B-1). The dispute under reference relates to:

"Whether the action of the management of Asstt. General Manager, State Bank of India, Region-I, Bhopal in terminating the services of Shri Manoj Ingle w.e.f.

16-10-99 and not regularizing his services is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party submitted statement of claim at Page 3/1 to 3/5. Case of Ist party workman is that he was working as messenger on daily wages with IIInd party at Sultania Road, Bhopal Branch for 43 days in 1998, Hamidia Road for 164 days during 14-9-89 to 17-5-90 for 164 days, Bhurapura branch for 228 days in 1990-91. Workman submits as per settlement dated 17-11-87, worked for 30 days are eligible for absorption. The advertisement was published on 1-5-91, 20-8-91 for absorption of temporary employees. He had submitted application stating that he worked for total 435 days. Workman was called for interview on 19-2-97. After his interview, his name was included in the panel list. He was given intimation about his selection. On 8-9-97, he was allowed to join on post of messenger. The employees working for less number of days were absorbed as permanent employees. Ist party workman further submits that he completed 240 days continuous service. His services were terminated without notice on 16-10-99. IIInd party paid amount of Rs. 8631 towards retrenchment compensation. Amount Rs. 12,175/- towards arrears. Workman submits that he is employee under Section 25 B of ID Act. His services are terminated in violation of Section 25-F of ID Act. Principles of last come first go was not followed. IIInd party violated Section 25-G,N of I.D. Act. he was not provided re-employment thereby IIInd party violated Section 25-H of ID Act. On such grounds, workman prays for reinstatement with back wages.

3. IIInd Party submitted Written Statement at Page 10/1 to 10/9 opposing claim of workman. preliminary objection is raised that Shri R. Nagwanshi was a dismissed employee. He has no locus to represent the workman. IIInd party has admitted Ist party workman work for 164 days in Hamidia Branch in Bhopal during 1989 to 90, 87 days in 1990 in Govindpura Branch, 766 days during 1997 to 99 Hamidia Road Branch. Workman was paid retrenchment compensation Rs. 8631/- on 16-10-99. The cheque was returned back.

4. Workman was engaged on contract basis at opening hours and closing hours of the Bank. His engagement ended at end of the day. His discontinuation is covered under Section 2(oo)(bb) of ID Act. Provisions of Section 25-F are not applicable. Settlement dated 17-11-87, 16-7-88, 28-10-88, 9-1-91 with Union are not disputed. Workman was called for interview as per settlement. On 19-2-97 he was not found eligible for compassionate appointment considering the seniority and certificate of work. Ist party workman worked for 164 days and thereafter for 87 days before cut off date 14-8-91. Workman was appointed on daily wages casual labour. He was never appointed on vacant post of messenger. Above contentions are reiterated by IIInd party and it is submitted that workman is not entitled to any reliefs.

5. Ist party workman submitted rejoinder at page 11/1 to 11/3 reiterating his contentions in statement of claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of Asstt. General Manager, State Bank of India, Region-I, Bhopal in terminating the services of Shri Manoj Ingle <i>w.e.f.</i> 16-10-99 and not regularizing his services is justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

#### **REASONS**

7. The terms of reference pertains to legality of termination of services of Ist party workman and not regularization of his services. Workman filed affidavit of his evidence. However he remained absent for his cross-examination. Therefore oral evidence of workman cannot be accepted.

8. Management field affidavit of witness Shri Vinay Kumar Singh. Management's witness in his affidavit of evidence has narrated working days of workman 164 days in 1989 to 1990, 87 days in 1991, 766 days in 1997 to 1999. However the management's witness has stated that workman was engaged on daily wages. His services came to end of every day. His discontinuation does not amount to retrenchment under Section 2(oo) rather it is covered under Section 2(oo)(bb) of ID Act. The affidavit of management's witness is further devoted to the settlements between Union and management. Its benefit was extended till 14-8-91. Workman was interviewed but his working days were found less. Workman had submitted certificate of 36 working days till 14-8-91. The witness of management in his cross-examination says he was not posted at Sultania Road Branch, Hamidia Branch in 1988 to 1990. He was not posted in Hamidia Branch in 97-99. Before engaging workman on work, permission of Controlling Authority was not taken, appointment letter was not issued to him. His attendance register was not maintained. The contract under which workman was engaged was not produced. He claims ignorance whether list of daily wage employees was displayed on notice board at the time of termination of workman. Management's witness claims ignorance whether retrenchment notice was issued to workman. The amount of retrenchment compensation was sent by cheque. The cheque is available in the Bank. Those documents are not produced.

9. From evidence of management's witness, working days of workman are admitted. The documents of retrenchment notice, payment of retrenchment compensation are not produced on record.

10. Exhibit W-1 shows 87 working days of workman during 1-1-91 to 14-8-91. In Exhibit W-2 working days of workman are shown 164 days during 14-9-89 to 17-5-99, Exhibit W-3 & 4 are copy of public days during 14-9-89 to 17-5-99, Exhibit W-3 & 4 are copy of public notice inviting applications from temporary employees for their absorption. Exhibit W-5 is copy of application submitted by workman giving details of his working days. Workman has shown 43 days working in 1988, 164 days in 1989-90, 228 days in 1990-91. It falsifies evidence of management's witness that workman has shown 36 working days in his application. In Exhibit W-6 admitted by IIInd party, Asstt. General Manager informed that number of working days is not prescribed for absorption of casual employees. Exhibit W-7 is interview call issued to workman calling for interview on 19-2-97.

Exhibit W-8 is certificate about working of Ist party by Branch Manager. W-9 is reply filed by IIInd party before ALC. The payment of retrenchment compensation was shown in the reply. Cheque Exhibit W-10 shows that workman was paid amount of Rs. 8631, 12,175 were paid to the workman in the year 2003. As per Exhibit W-11, Manager requested to close the proceeding. W-12 is certificate about working days to one Gopal Krishna Sarsiya. His working days are shown 67 days in 1981-82. Exhibit W-13 is copy of appointment letter issued to Shri GK. Sarsiya. Exhibit W-14 is letter given by Asstt. General Manager calling information of temporary employees. Exhibit W-15 is list of selected candidates, it is incomplete. Exhibit W-16 is copy of appointment letter issued to one Mangal Singh. The documents Exhibit W-17, W-18, 19 pertains to engagement of other persons. Exhibit W-20 is list of successful candidates in computer operating test of the year 2007.

11. The evidence of IIInd party is clear that the list of casual employees was not displayed on notice board at the time of discontinuation of workman. Working days of Ist party workman were not considered at the time of termination of services of Ist party workman in context of the settlements. In Exhibit M-1, at Page 3 the daily wage employees should have completed 240 days temporary service in continuous block of 12 calendar months or less after 1-7-75 are eligible for absorption. In Page-3 (II) (ii)(b), it is provided that the aforesaid aggregate temporary service of 270 days, 240 days, 70 days, 30 days should have been put in temporary employee at any one or more of the office branches falling within a module as existing/defined as on 31-7-88. Document Exhibit M-2 to M-5 pertains to settlement between management and Union. Exhibit M-4 at Page 51 provides Clause I of settlement dated 17-11-87 as modified by settlement dated 16-7-88 substituted in the year 1992 with 1994. Similarly in clause 1(a) of the settlement dated 27-10-88 substituted 1988 to

1992, 1995 & 1996. Said settlement also provides for conducting interviews for permanent appointment by Selection Committee at preparation of panel. Copy of select list produced at Exhibit M-6 shows working days of the candidates appointment by IIInd party. 143 days of Kailash Chandra, Meena Lal Gehlod, 133 days of Bharatlal Kori, 90 days of Nandlal, 89 days of B. Satyanaran. The working days of workman are quite more than that the working days of workman are quite more than that the working days of above candidates. The name of workman is found at Sl. No. 186 with remarks "Suitable in SC Category". The working days proved from evidence on record are 164 days during 89-90, 87 days in 1991 as per affidavit of evidence filed by management's witness. It clearly shows that working days of workman were not carefully shown while the select list was prepared. It was the reason why workman was denied opportunity for absorption. Considering his working days proved from evidence, workman is wrongly denied benefit of regularization as per settlement dated 28-10-88 which was extended to 14-8-91.

12. Learned counsel for IIInd party Shri Khare advanced argument considering the working days of Ist party workman before cut off date 14-8-91 were only 36 days. It is contrary to the evidence on record. Workman was paid retrenchment compensation and arrears of the salary but list of daily wage employees was not displayed on notice board as contemplated under Section 25 G and Rule 77 of ID Act. Thus termination of service of workman is illegal. Instead of regularising services of workman, he was illegally terminated by IIInd party. For above reasons, I record my finding in Point No. 1 in Negative.

13. Point No. 2—while dealing with Point No. 1, it is found that the working days of workman were not properly considered. Instead of regularizing his services, workman was terminated. Question remains whether workman is entitled for reinstatement with backwages/regularization. The evidence discussed while dealing with Para 1 working days of workman are much more than the candidates appointment from select list Exhibit M-6. Workman is wrongly denied benefit of regularization showing lesser number of working days in the list. The termination of workman also suffers from illegality as seniority list of the casual temporary employees working in IIInd party was not displayed in notice board. Reasons for termination of his services were also not informed to the workman. Considering above aspects, workman is entitled for benefit of regularization. On point of relief to be granted for violation of section 25-F of ID Act, Advocate for management relies on ratio in case of:

Incharge officer and another *versus* Shankar Shetty reported in 2010(9)SCC 126. Their Lordship dealing with the point, what relief to be granted for violation of Section 25-F of ID Act held respondent engaged as a daily wager in 1978, worked intermittently for 7 years upto his retrenchment which was about 25 years back. Order of

reinstatement was set aside and compensation Rs. One Lakh was awarded.

The facts of present case are not available. Workman was denied benefit of settlement dated 17-11-88. His working days were not carefully considered. Services of workman were terminated from 16-10-99 therefore compensation for violation of Section 25-F would be justified. As the workman is also entitled for regularization of his services in pursuance of settlement dated 17-11-88. Considering all the aspects, workman is entitled for reinstatement. Workman has not appeared for his cross-examination. His evidence cannot be considered. Therefore claim of workman for back wages cannot be allowed. Accordingly I record my finding in Point No. 2.

14. In the result, award is passed as under:—

- (1) The action of the management of Asstt. General Manager, State Bank of India, Region-I, Bhopal in terminating the services of Shri Manoj Ingle *w.e.f.* 16-10-99 and not regularizing his services is not legal.
- (2) Management is directed to reinstate workman as messenger with continuity of service. The claim for backwages is rejected.

Parties to bear their respective costs.

15. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 5 मई, 2015

**का.आ. 928.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के सबद्वं नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकारण जबलपुर के पंचाट संदर्भ संघा (56/05) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/05/2015 प्राप्त हुआ था।**

[सं. एल-12012/153/2004-आई आर (बी-1)]

सुमिति सकलानी, अनुभाग अधिकारी

New Delhi, the 5th May, 2015

**S.O. 928.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 56/05) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the ANNEXURE, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 05/05/2015.

[No. L-12012/153/2004-IR (B-1)]

SUMATI SAKLANI, Section Officer

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/56/05

General Secretary, Daily Wages Bank Employees Association, 9, Sanwar Road, Ujjain	...Workman/Union
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*Versus*

Asstt. General Manager, State Band of India, Region-V, Zonal Office, Hamidia Road, Bhopal (MP)	...Management
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## AWARD

Passed on this 22nd day of April, 2015

1. As per letter dated 20-6-05 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/153/2004-IR(B-1). The dispute under reference relates to:

"Whether the action of the management of State Bank of India, Region-V Bhopal in terminating the services of Shri Ramnath Singh Sengar *w.e.f.* 25-1-03 is legal and justified? Whether the claim of the workman for his regularization in services as an Armed Guard is justified? In the facts and circumstance of the case what relief is the workman entitled to?"

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at page 3/2 to 3/7. Case of workman is that on 30-10-98, he was called for interview by Branch Manager, Shri P.M. Karkare, some on day, he was engaged as Security Guard. He was continuously working as Security Guard. Shri Satram Singh, Bhagwan Singh Baish, L.S. Bhadoliya, C.S.P. Mishra also working as Security Guard. During leave vacation of the Security guards, he was engaged. He was paid wages as per scale. He was also required to work night. Nightpass was issued to him on 7-8-99. He completed 240 days continuous service during each of the year. On 23-11-02, he submitted application for regular appointment. He had worked for 921 days. His services were terminated of without notice from 25-1-03. During pendency of conciliation proceedings, on 7-2-03 his services were terminated in violation of Section 33-A of ID Act. 1st party workman reiterated that he had completed 240 days continuous service. His services are terminated in violation of Section 25-F, G of ID Act. Principles of last come first go was not

followed. On such ground, 1st party for his reinstatement with backwages.

3. IIInd party filed Written statement at Page 10/1 to 10/9 opposing claim of workman. Preliminary objection is raised that Shri Ram Nagwanshi is terminated from Bank service, he is not competent to raise dispute. The reference is not tenable. In para-1 of the Written Statement, IIInd party has shown working days of workman 52 days in 1998, 258 days in 1999, 234 days in 2000, 287 days in 2001, 269 days in 2002-total 1100 days.

4. IIInd party submits that workman was not appointed as regular employee. He was engaged casually as per exigencies of work on daily wages. His engagement came to end at end of the day. His discontinuation of workman is covered under Section 2(oo) (bb) of ID Act. It doesnot amount to retrenchment. Workman had not worked continuously for 240 days during any of the year. Workman is not entitled to benefits of settlement dated 17-11-87, 16-7-88, 20-10-88, 9-1-91. As per provisions of those settlements, applications were called from candidates and after interview, panel of selected candidates were prepared. Workman did not work prior to the cut off date 14-8-91. He was never appointed as regular employee. Workman is not covered under Section 25 B of ID Act. Violation of Section 33 of ID Act is denied. Termination of services of workman, violation of Section 25-F is also denied. IIInd paprty reiterates that workman had not completed 240 days continuous service. His engagement on daily wages was ending at end of the day. Violation of Section 25-G, H of ID Act is not denied. Workman is not entitled for absorption as messenger.

5. 1st party submitted rejoinder at page 12/1 to 12/3 reiterating his contentions is statement of claim.

6. Considerting pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of State Bank of India, Region-V Bhopal in terminating the services of Shri Ramnath Singh Sengar <i>w.e.f.</i> 25-1-03 is legal and justified?	In Negative
(ii) Whether the claim of the workman for his regularization in service as an Armed Guard is justified?	In Affirmative
(iii) If not, what relief the workman is entitled to?"	As per final order.

## REASONS

7. The terms of reference relates to legality of termination of service of workman, denial of regularisation as Armed Guard. IIInd party in its written Statement Para-1 has shown working days more than 240 days during the year 1999 to 2001-02. In subsequent paras, other IIInd party has denied completion of 240 days continuous service of workman. The documents admitted by IIInd party Exhibit W-1 is application submitted by workman. In Exhibit W-2, his address is shown at Ujjain. In Exhibit W-3, workman had requested that he may be allowed permission for appearing in the interview conducted by Bank for absorption of temporary employees. Similar request was made by workman in Exhibit W-4, W-5. Though IIInd party had denied completion of 240 days continuous service by workman, certainly Exhibit W-6 admitted by IIInd party shows 1st party workman worked for total 921 days during December, 1998 to August, 2002. Exhibit W-7 is notice issued by ALC, Bhopal to IIInd party. Exhibit W-8 is letter given by workman dated 25-1-03 requesting to issue order of his termination. Exhibit W-9 is showcause notice issued by ALC *w.r.t.* violation of Section 33(1) of ID Act. Exhibit W-10 is copy of same notice addressed to General Secretary of Union. W-11 is copy of submission of IIInd party before ALC. Document Exhibit W-12 to 15 admitted by IIInd party pertains to the working days of 1st party workman. Those documents support evidence of workman that he completed more than 240 continuous service. Other documents admitted by IIInd party are the copies of issued notice by ALC. Policy in the matter of recruitment Exhibit W-21. Exhibit W-22, 23, 24 are copy of Para 522(1) of Sastry Award.

8. Workman submitted affidavit of his evidence covering his contention in statement of claim that he was continuously working more than 240 days from 31-10-98 till 23-11-02. His service were terminated from 25-1-03. Workman in his cross-examination says he was not engaged as per advertisement of the Bank. He was going to the Bank for deposit of amount while he was working in cloth mill. He denies that he was paid wages in the evening after his working in the Bank. In his cross-examination, he admits that as per settlement, employees working during 1-1-1975 to 14-8-91 were called for interview. The engagement of workman is not prior to the cut off date 14-8-98 as per settlement. Copies of settlements are produced on record. Name of workman is not found in the select list produced on record. The evidence of workman about completing 240 days continuous service is not shattered rather it is corroborated by the documents discussed earlier.

9. When management's witness Shri Sunil has also given working days in Para-1 of his affidavit that the workman had worked for 1100 days, the details are given. The evidence of management's witness corroborates evidence of workman. Management's witness in his cross says

contract about engagement of workman was oral, any contract was not produced. Workman was not called for interview in 1997. He claims ignorance about payment of retrenchment compensation or notice of termination issued to workman. The evidence discussed above shows that workman completed 240 days continuous service. His services were terminated without notice. Workman was not paid retrenchment compensation. The workman was engaged after cutt off date 14-8-98 therefore he is not entitled for regularization as per the settlement. The termination of his service is in violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No. 1 in Negative, Point No. 2 in Affirmative.

10. Point No. 3—in view of my finding in Point No. 1, 2 termination of service of workman is in violation of Section 25-F of ID Act, question remains for consideration is whetehr workman is entitled for regularization, reinstatement with backwages. On the point, learned counsel for IIInd party Shri V.K. Khare relies on ratio held in case of:

State of Karnataka and other *Versus* M.L. Kesari and other reported in 2010(9)SCC 247. Their Lordship dealing with question of regularization of casual labour only irregular appointees are entitled to regularization in terms of Para 53 of Umadevi case held appointment of qualified persons made against sanctioned post without following process of open competition are irregular appointments.

In case of Incharge Officer and another *versus* Shankar Shetty reported in 2010(9) SCC 126. Their Lordship considering engagement of daily wager intermittently for 7 years upto his retrenchment, which was baout 25 years back. High Court's order for reinstatement was set-aside awarding compensation Rs. One Lakh.

In present case, workman was not engaged following recruitment process is clear from evidence in cross-examination. The 1st party workman worked from October, 98 till 23-1-03 for a period more than 4 years. Reinstatement would not be justified. However services are terminated in violation of Section 25-F of ID Act, compensation Rs. 75,000/- would be reasonable. Accordingly I record my finding in Point No. 3.

11. In the result, award is passed as under:—

- (1) The action of terminating the services of Shri Ramnath Singh Sengar w.e.f. 25-1-03 is illegal. Action of denial of regularization of workman is proper and legal.
- (2) IIInd party is directed to pay compensation Rs. 75,000/- to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

12. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 5 मई, 2015

**का.आ. 929.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण जबलपुर के पंचाट संदर्भ संख्या (64/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/05/2015 को प्राप्त हुआ था ।

[सं. एल-12012/6/2001-आईआर (बी-1)]

सुमिति सकलानी, अनुभाग अधिकारी

New Delhi, the 5th May, 2015

**S.O. 929.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 64/2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 05/05/2015.

[No. L-12012/6/2001-IR (B-1)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

#### NO. CGIT/LC/R/64/2001

Shri Ram Prasad Ahirwar  
R/o Jhuggi No. 14, Vallabh Nagar,  
Near Satpura,  
Chaand Cycle Service,  
Ward No. 35, Bhopal (MP)

Workman

*Versus*

Asstt. General Manager,  
State Bank of India,  
Region-I, Zonal Office,  
Bhopal (MP)

Management

#### AWARD

Passed on this 1st day of April, 2015

As per letter dated 28-30/3/2001 by the Government of India, Ministry of Labour, New Delhi, the reference is recieved. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No.L-12012/6/2001-IR(B-1). The dispute under reference relates to:

"Whether the action of the management of State Bank of India, Region-I, Bhopal in terminating the services of Shri Ram Prasad Ahirwar *w.e.f.* 1-5-2000 is justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. 1st party workman filed statement of claim at page 3 to 11. The case of workman is that he was appointed in 1987. His work was satisfactory. Since 1987 he was working with IIInd party the advertisement was issued in 1991 for absorption of part time employees. 1st party workman submitted application. On 21-9-99, 1st party workman was informed that he was appointed on probation for period of six months. The documents of medical certificate, character certificate etc. were to be produced. If such documents were produced, workman will be given appointment *w.e.f.* 29-5-99. It is reiterated that his appointment was on probation of six months as per order dated 5-11-99. The appointment of workman was considered from 29-5-99 and difference of wages were paid to him. On 1-4-00, explanation was called from him. That he passed higher secondary examination in 1982. He suppressed said information and his educational qualification was shown only 8th standard. Workman had given reply to letter. Without considering his reply, his services were terminated as per order dated 1-5-00. Workman was paid one months pay.

3. Ist party workman submit that he was granted status of permanent employee after completion of probation period. Termination of his service is in violation of Section 25 of ID Act, as such illegal retrenchment. On such ground, workman prays for his reinstatement with back wages.

4. Management filed Written Statement on 7-7-05 opposing claim of workman. Case of IIInd party is that 1st party employee was engaged on daily wages in 1987 for filling water in cooler for 60 days. IIInd party has evolved procedure for selection of the staff. The provisions of various agreements, eligibility criteria etc. are to be followed while making permanent appointments. Previously temporary employees who completed minimum service during 1-7-75 to 31-7-88 were considered. Said period was extended till 14-8-91. The casual employees who completed minimum wages during above said period were given chance of permanent employment. Ist party employee was called for interview *vide* order dated 21-9-99. He was offered 1/3rd part time permanent employment on post of general attendant. Thereafter he was appointed as part time from 6-11-99 on probation period for a period of six months. The services of Ist party workman were liable to be terminated giving one months notice without assigning reasons. It is reiterated that workman had suppressed information passing higher secondary examination in 1992 and submitting information that he had passed only 8th standard. On account of giving false information, services of Ist party workman were terminated giving one months notice. The termination of workman is legal. The

appointment of Ist party workman based on wrong information is void-ab-initio. The termination order of workman does not call for interference. On such ground, it is submitted that workman is not entitled to any relief.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of State Bank of India, Region-I, Bhopal in terminating the services of Shri Ram Prasad Ahirwar <i>w.e.f.</i> 1-5-2000 is justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

#### **REASONS**

6. Workman is challenging termination of his services for violation of Section 25-F of ID Act. Workman has produced documents Exhibit W-1 forwarding termination order dated 1-5-00. Workman is removed from service giving one months pay. The reasons are given that he had suppressed information of passing HSc in 1992. Exhibit W-2 is notice advertising the post. The required qualification for messengers are shown 8th standard passed, non-matriculate will be considered. Other than the post of messenger passing HSc, SSc, Matriculation or equivalent examination in 3rd or 2nd class while not performing duties in the Bank shall be eligible for the post if high qualification was not the basis of securing any other employment. Exhibit W-3 is letter dated 21-9-99 calling documents of educational qualification character etc. Exhibit W-4 is appointment letter dated 5-11-99. The Ist party was appointed on 1/3rd of basic and allowances on probation to six months period. Exhibit W-5 is memorandum issued to workman calling explanation that he shown his qualification 8th standard suppressing educational qualification of passing HSc in 1992. Exhibit W-6 is reply given by workman admitting his mistake. Exhibit W-8 is copy of certificate of his residence.

7. Workman filed affidavit of his evidence supporting his contentions is statement of claim. In his cross-examination, workman says on 6-11-99, he joined on the post of messenger. He was appointed as per the settlement with Union. Affidavit of his evidence was drafted by the Advocate, he signed on it reading the contents. Exhibit W-9 is order of removal of workman giving one months pay. Exhibit W-10 is certificate issued by Branch Manager that workman was working in Udyanchal Branch of SBI at Bhopal from Dec-90 to July 97. Exhibit W-11 is copy of public notice. Exhibit W-12 is copy of residential proof.

Similar documents are produced earlier. Management has produced document Exhibit M-1 is declaration submitted by workman. His educational qualification is shown 8th standard in 1978. Exhibit M-2 is copy of letter dated 21-9-99, M-3 is copy of letter dated 5-11-99. Workman was directed to produce declaration of facility rules of conduct, domicile and undertaking to serve in the Branch. Copy of explanation submitted by workman is produced at Exhibit M-5. Copy of memorandum produced at Exhibit M-6. Identical set of documents are produced at Exhibit M-7, 8, 9 & 10.

8. Management's witness Shivkant Chaturvedi filed affidavit of his evidence supporting contentions of management that management had entered in agreement with Bank Staff Federation providing opportunity giving one change. The agreements were entered on 17-4-87, 16-7-88, 27-10-88 & 9-1-91. That as workman has suppressed information of passing 12th standard, his appointment was void. Workman is not entitled to protection of Section 25-F of ID Act. Management's witness in his cross-examination says workman had worked for some days in 1987. He was unable to tell exact working days in 1987. After agreement with Union, workman was engaged on probation for six months. He was terminated during said period as he suppressed information about his educational qualification passing Hsc. There was no other reason for termination of his service. Notice was issued to workman was replied by him. He admitted information about educational qualification for appointment as messenger is 8th standard. Domestic enquiry was not conducted against workman. On completion of six months service Bank employee is confirmed. Management's witness denies that workman was working on daily wages from 87 to 89. Management's witness says that muster from 87 to 89 is not produced.

9. The advertisement notice Exhibit W-2 clearly provides that higher qualification acquired by such employees passing matriculation in 3rd or 2nd Division would be considered for post other than messenger. The management has not produced copies of settlements between management and Union pertaining to the absorption of casual or part time employees. The evidence of workman that he was working with the Bank from 1987 to 1-5-00 remained unchallenged. Any document is not produced by IInd party that higher qualification of casual or part time employees would be disqualification for absorption on permanent post. The service of workmen are terminated after completion of the probation period of six months.

10. Learned counsel for 1st party workman Shri Ashok Srivastava during course of argument submits that the termination of workman is covered as unfair labour practice under Section 2(r) of I.D. Act. Higher qualification cannot be a disqualification. The service of workman are not terminated during probation period. Workman is not paid retrenchment compensation under Section 25-F of I.D. Act.

11. Learned counsel of IInd party Shri Vijay Tripathi emphasized that workman suppressed information of passing higher secondary examination. He admitted his mistake in Reply Exhibit M-6 Workman was paid one month's pay as per Exhibit M-8. The termination of workman as per conditions of appointment is legal.

12. Reliance is placed on ratio held in "Case of State of MP and others reported in Shyama Pardhi and others reported in 1996(7) SCC-118. The ration held in the case relates to persons not possessing the pre-requisite qualifications prescribed by statutory rules wrongly selected and after successful Completion of training appointed as Auxiliary Nurse-cum-Midwife. In such circumstances, their initial selection to undergo training being per se illegal, termination of their appointment did not attract principles of natural justice.

Above cited case relates to not possessing requisite qualification. Present case relates to workman posses higher qualification was not disclosed therefore ration cannot be applied to present case at hand.

Next reliance placed on ratio held in case of Rajajinagar Coop Bank Ltd. *Versus* K. Gururaj and another reported in 2001(10) S.C.C. 681. their Lordship dealing with Section 25-F under Section 10(4)(a) of I.D. Act held termination of service of probation prior to the expiry of probation period in terms of appointment order, held doesnot attract Section 25-F of I.D. Act.

In present case, the services of workman are not terminated during probation period considering the performance of workman, his services are terminated in the ground that he had suppressed information of higher educational qualifications. The ratio cannot be applied to present case.

13. The evidence of workman that he was working with IInd party from 1987 to 2000 remained unchallenged. Workman was not paid entrenchment compensation. Therefore termination of services of workman is in violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

14. Point No.2-in view of my finding in Point No.1, termination of services of workman is illegal, question arises whether workman is entitled for reinstatement with backwages. The evidence discussed while dealing with Point No.1 is that workman was working with IInd party from 1987 to 2000 as casual employee as per settlements with Union. Workman was absorbed for permanent post. His services were terminated for suppressing his educational qualification. Possessing higher education in 1982 long before the workman was engaged as casual employee. No agreement between management and Union is produced that such higher qualification was a disqualification for absorbing casual employees. Workman cannot be held

responsible for termination of his services. Evidence of workman that he was rendered unemployed after termination of his services remained unchallenged. The evidence of management's witness is silent that workman was in gainful employment after termination of his services. Learned counsel for workman Shri Ashok Srivastva relies on ratio held in.

Case of Gyan Sudha Mishra and V. Gopala Gowda reported in 2014-LAB-I.C.2643. the award of Labour Court for reinstatement with full back wages was upheld by their Lordship setting aside the order of High Court holding that workman resigned and awarding compensation Rs. 1,00,000/- was allowed.

In case of Jasmer Singh versus State of Haryana and another reported in 2015(144) FLR 837. Their Lordship of Apex court held provisions of Section 25-F.G. & H not complied with neither any notice was served on him nor any retrenchment compensation was paid. Principal of last come first go was not followed. The award of reinstatement with continuity of service and full back wages was upheld.

Even in present case, workman was not in employment of IIInd party when he passed HSc examination in 1982. The higher qualification cannot be a disqualification for absorption on permanent post. Termination of Ist party workman is illegal. Therefore the reinstatement of workman with full back wages deserves to be allowed. Accordingly I record my finding in Point No. 2.

15. In the result, award is passed as under:—

- (1) The action of the management of State Bank of India, Region-I, Bhopal in terminating the services of Shri Ram Prasad Ahirwar w.e.f. 1-5-2000 is not proper and legal.
- (2) IIInd party is directed to reinstate workman with continuity of service with full back wages.

16. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 5 मई, 2015

**का.आ. 930.—**ओद्योगिक विवाद अधिनियम, 1947 1947 का 14 की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण जबलपुर के पंचाट संदर्भ संख्या (64/02) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/05/2015 प्राप्त हुआ था।

[सं. एल-12012/424/2001-आईआर (बी-1)]

सुमिति सकलानी, अनुभाग अधिकारी

New Delhi, the 5 May, 2015

**S.O. 930.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.64/02) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of and their workmen, received by the Central Government on 05/05/2015.

[No. L-12012/424/2001-IR(B-1)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUMLABOUR COURT LABOUR COURT,JABALPUR

NO.CGIT/LC/R/64/02

General Secretary, Daily Wages Bank Employees Association, Hardev Niwas, 9, Sanwer Road, Ujjain	...Workman/Union
<i>Versus</i>	
Asstt. General Manager, State Bank of India, Region-I, Zonal Office, Hamidia Road, Bhopal (MP)	...Management

#### AWARD

Passed on this 23rd day of March, 2015

1. As per letter dated 4-4-02 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No.L-12012/424/2001-IR (B-I). The dispute under reference relates to:

"Whether the action of the management of Assistant General Manager, State Bank of India, Region-III Bhopal by not regularizing the services of Shri Sumer Singh after working for 20 years of service and depriving him from the terminal benefits is justified? If not, what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Statement of claim is submitted through General Secretary, Daily wage Bank employees Union Shri R.Nagwanshi at Page 2/1 to 2/4 as well as 5/2 to 5/4. Case of Ist party is that he was engaged as Arm Guard on daily wages in the city branch Indore. The date of birth of workman in 16-1-1936. He retired from Military service on 1-2-1979. He was engaged by IIInd party from 22-3-79. He honestly performed his duties. Even after

attaining age of 60 years, workman on request of Branch manager, his services were continued till age of 63 years. On 24-4-99, he submitted application of Branch Manager Mr. More. That due to old age, he was unable to perform his duty, his resignation may be accepted. Thereafter workman was retired from service. He was not allowed retiral benefit. Gratuity was not paid to him. It is submitted that workman was continuously working more than 240 days. He was continued as badly watchman. He was not allowed benefit of settlement dated 27-10-88, 9-1-91. His services were regularised despite he was working more than 240 days as per the settlements. His request for appointment as permanent employee was not accepted on ground that at the time of initial appointment, the age should be 18 to 26 years. At the time of initial engagement, his age was 43 years. On such ground, Ist party workman is praying for retiral benefits as permanent employee.

IInd party filed Written Statement at Page 9/1 to 9/6 opposing claim of workman. IInd party submits that workman was working as badly watchman during 23-3-79 to 24-4-99. Workman has not completed 240 days continuous services. Workman had not worked during the period 1983 to 1985, 94 to 96. workman is not entitled for gratuity. It is denied that workman worked till 24-4-99. On his resignation, he was retired. There was no question of voluntary retirement of workman engaged as badly watchman. The engagement of workman was temporary on contract basis. At the time of engagement of workman, his age was 43 years 2 months. He was not eligible for appointment as regular permanent employee. As workman has not complated 240 days continuous service during any of the year, he is not entitled to retiral benefits. On wuch ground, IInd party prays for rejection of claim. Ist party workman submitted rejoinder at Page 12/1 to 12/2 reiterating its contentions in statement of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of Assistant General Manager, State Bank of India, Region-III Bhopal by not regularizing the services of Shri Sumer Singh after working for 20 years of service and depriving him from the terminal benefits is justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

## REASONS

5. The parties are not in dispute about engagement of workman as Security Guard/watchman after his retirement from Military service. IInd party has pleaded that workman not completed 240 days continuous service during any of the year. Age of workman was 43 years, 2 months to time of his initial engagement. Therefore workman was not eligible for appointment as regular employee. Documents produced by workman Exhibit W-1 shows date of discharge of workman 1-2-1979 and pension Rs. 600 p.m. The date of birth of workman is shown 16-1-36. Exhibit W-2 is public notice issued inviting applications for absorption of part time employee. The public notice shows age of candidate should be between 18 to 26 years.

6. Workman filed affidavit of his evidence but as he failed to appear for his cross-examination, his evidence cannot be considered.

7. Management has produced copies of settlements at Exhibit M-1 to M-5. Settlement Exhibit M-1 page 10 pertaining to requirement of temporary guards/watchman provides:—

Army service should be ex-servicemen, having completed their normal colour service rather than those who were discharged from service. Further ex-servicemen should preferably be from the fighting arms and well versed in handling fire arms, sentry and security duties. At Page 11 under II(iii) relaxation to ex-service men to the extent of defence service rendered by candidate plus 3 years.

Thus Ist party workman retired from military service on 1-2-1979 was entitled for relaxation of 3 years after his retirement from Military service. Workman was engaged in Marchy 1979 hardly after one month of his retirement. Workman is entitled for relaxation in age as per Exhibit M-1. IInd party has not considered above provisions while denying the benefit of settlement dated 17-11-88 to Ist party workman. as per above settlement dated 17-11-88 to Ist party workman. as per above settlement, the workman was entitled to regularisation in age. Though IInd party had contented that workman had not completed 240 days continuous service, Ist party had not worked during year 1983 to 1985, 1994 to 1996 IInd party has not produced documents about working days of Ist party.

8. Management's witness Santosh Kumar supported contentions in Written Statement of workman on the point. Management's witness in is cross-examination says Ist party workman was retired defence personnel. After is retirement, he had submitted application, he was engaged temporarily as security from 22-3-1979. Management's witness claims that the details of his working days are produced in the matter Counsel for IInd party fairly pointed

out that no such chart is produced, neither there is reference in Written Statement. Management's witness denies that Ist party was paid as per pay scale. That workman was engaged as per oral order as per the exigencies. Attendance Register was maintained. It is not produced on record. The management's witness admits Exhibit W-3. He further says age of Ist party workman was 43 years at the time of his initial engagement. He had not completed 240 days during any of the year. His services were not regularised.

9. As discussed above, the workman was entitled for relaxation of 3 years in age after retirement from Military service therefore denial of regularization to workman on the ground of overage cannot be accepted. Workman was engaged in the year 1979. He was continued as badly watchman till his retirement from service in the year 1999. Continuing employee as badly for years together is unfair labour practice under Item 10 Schedule V of ID Act which provides—

"To employee workman as badlis, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent workmen."

Workman was also denied benefit of settlement dated 17-11-88 therefore action of management is illegal. For above reasons, I record my finding in Point No.1 in Negative.

10. In the result, award is passed as under:—

- (1) The action of the management of Assistant General Manager, State Bank of India, Region-III Bhopal by not regularizing the services of Shri Sumer Singh after working for 20 years of service and depriving him from the terminal benefits is illegal.
- (2) IIInd party is directed to give status of permanent employee to the Ist party workman from settlement dated 17-11-88. IIInd party is also directed to give retiral benefits to workman within 2 months from date of publication of award.

R.B. PATLE, Presiding Officer

नई दिल्ली, 5 मई, 2015

**का.आ. 931.—**औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट संदर्भ संख्या (85/02) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/05/2015 को प्राप्त हुआ था।

[सं. एल-12012/478/2001-आईआर (बी-1)]

सुमिति सकलानी, अनुभाग अधिकारी

New Delhi, the 5th May, 2015

**S.O. 931.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the Award (Ref. No. 85/02) of the Cent. Govt. Indus. Tribunal-cum-Labour Court Jabalpur as shown in the ANNEXURE, in the Industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 05/05/2015.

[No. L-12012/478/2001-IR (B-I)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

#### NO. CGIT/LC/R/85/02

General Secretary,  
All India State Bank of Indore  
Employees Association,  
9, Sanwer Road, Ujjain

...Workman/Union

*Versus*

Asstt. General Manager,  
State Bank of India,  
Zonal Office, Hamidia Road,  
Bhopal (MP)

...Management

#### AWARD

Passed on this 20th day of April, 2015

1. As per letter dated 28-5-02 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section- 10 of I.D. Act, 1947 as per Notification No. L-12012/478/2001-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of Asstt. General Manager, State Bank of India, Bhopal in not regularizing the services of Shri Anil Kumar Shrivastava is justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party submitted statement of claim at page 6/4 to 6/9. Case of Ist party workman is that he was engaged as temporary messenger by Branch Manager Shri N.R. Khatri from 1-1-1985. He was working with devotion. He was working under different Branch Managers. Only peon working in the branch Pramila Raikwar was attending his duty from Sujalpur. He was leaving office early and

attending office late. That workman was required to do additional duties on daily wages paid Rs. 13 during 86 to 96. He was required to do perform duty of regular peon like distribution of correspondence, opening and closing cash, stitching bundles etc. he was paid full scale wages. During 1986 to 1996, he was paid wages in different names in bogus bills. The benefits of settlement dated 27-10-88 were extended till 1991. The casual daily wage employees working for 270/240/70 or 30 days were given opportunity for absorption on permanent post. Workman was called for interview on 27-12-90. After interview of Ist party, he was continued on daily wages in Maksi branch. Again advertisement was published calling applications for appointment as per settlement. Workman submits that he was again interviewed on 18-8-92. He was continued on daily wages in Maksi branch. He received information that his name was in select list as per letter dated 24-3-93. He was continuously working till July 1996. He was not paid 8% statutory bonus. On such ground, workman prays for regularization of his service and direction for payment of bouns etc.

3. IIInd party filed Written Statement at Page 10/1 to 10/7 denying claim of workman. That Shri Ram Nagwanshi General Secretary of Daily Wage Employees Union is not concerned with IIInd party. The reference is not tenable. IIInd party has also referred to award passed in R/194/99 and submits that claims of workman is not tenable. That as per settlement between management and Union, the applications were called by public notice from daily wage employee working during 1-7-75 to August 1991. 67 applications were received. The daily wage employee were called for interview on 6-5-91. Name of workman was not found in the seniority list therefore he could not be appointed. Shri R. Nagwanshi is not a employee, he has no locus standi to represent the workman. Workman was employed as messenger for 67 days in Sujalpur branch in the year 1995. He was engaged on daily wages. His service came to end every day. His discontinuation is covered under Section 2 (oo) (bb) of ID Act,. The settlement dated 31-7-88 to 14-8-91 provided opportunity for permanent employment. Workman was called for interview but his name was much below in the Waiting List. He could not be appointed. On such contentions IIInd party submit that workman is not entitled to any relief.

4. Ist party has submitted rejoinder at Page 4/1 to 4/3 reiterating his contentions in statement of claim. It is alleged that the IIInd party has engaged in unfair labour practice after interview on 27-12-90, 18-8-92 considering 67 working days, his name was included in Waiting List, at Sl. No. 1 and name of Devilal at Sl. No. 2.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of Whether the action of the management of Asstt. General Manager, State Bank of India, Bhopal in not regularizing the services of Shri Anil Kumar Shrivastava is justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

#### **REASONS**

The terms of reference relates to denial of regularization of services of Ist party workman the terms of reference do not include any other grievance like non-payment of bonus to the workman.

7. Workman filed affidavit of his evidence supporting contentions of his claim. That he worked for 67 days as messenger in Maxi branch before the cut off date. He was called for interview for absorption on permanent post. On 18-8-92, he was called for interview for 3rd time in the year 1997. However he was not interviewed on the ground that he was interviewed earlier. Workman in his cross says he started working in the branch from 1-1-1985. The post was advertised. The appointment letter was not given to him. He was not interviewed at that time. He worked from January 85 to April 85. The settlement between management and Union was for regularization of the employees working in 1975 to 1991. He submitted application as per advertisement. He was interviewed on 22-12-90, his name was at Sl. No. 1 in the Waiting List. List is produced on record. He admits that whenever work was available, he was engaged. He was paid Rs. 30/- per day. He has not produced document that Devilal was junior to him.

8. Management produced documents at Exhibit M-1 to M-6. The settlements between management and Union is not in dispute. Exhibit M-1 provides aggregate service of 270, 240, 70, 30 days should be put in by temporary employee as on 31-7-88. There is no dispute that workman had worked for 67 days in 1985. Exhibit M-2 has no direct bearing. Exhibit M-4 deals with settlement dated 17-11-87. In Select list Exhibit M-6 the names of selected candidates are shown category wise for post of messenger. The category C pertains to employees working 70/30 days

during the cut off period. The candidates found suitable/ eligible are shown. Evidence of workman does not show that employees having less working days in the list are appointed in the Bank. Document P-6 copy of the public notice advertising the post shows that public notice was issued for absorbing temporary employees against permanent post. the select list Exhibit M-6 was prepared showing the working days against name of selected candidates. Any person having less working days than workman is not appointed. The claim of workman for regularization is not acceptable.

9. The argument advanced by Shri R. Nagwanshi about violation of Section 25-F and non-payment of retrenchment compensation cannot be considered in present reference as legality of termination of workman is not covered under terms of reference. For above reasons, I record my finding in Point No. 1 in Affirmative.

10. In the result, award is passed under:—

- (1) The action of the management of Asstt. General Manager, State Bank of India, Bhopal is not regularizing the service of Shri Anil Kumar Shrivastava is proper and legal.
- (2) Workman is not entitled to any relief.

11. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R.B. PATLE, Presiding Officer

नई दिल्ली, 5 मई, 2015

**का.आ. 932.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 86/02) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/05/2015 को प्राप्त हुआ था।

[सं° एल-12012/479/2001-आईआर (बी-1)]

### सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 5th May, 2015

**S.O. 932.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the Award (Ref. No. 86/02) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 05/05/2015.

[No. L-12012/479/2001-IR (B-I)]

SUMATI SAKLANI, Section Officer

## **ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,**

JABALPUR

NO. CGIT/LC/R/86/02

General Secretary,  
All India State Bank of Indore Employees Association,  
9, Sanwer Road, Ujjain Workman/Union

Versus

Asstt. General Manager,  
State Bank of India,  
Zonal Office, Hamidia Road,  
Bhopal (MP) Management

## AWARD

Passed on this 20th day of April 2015

1. As per letter dated 30-5-02 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section- 10 of I.D. Act, 1947 as per Notification No. L-12012/479/2001-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of Asstt. General Manager, State Bank of India, Bhopal in not regularizing the services of Shri Ashok Sisodia is justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party submitted statement of claim at page 2/5 to 2/11. Ist party workman submits that he was called by Branch Manager on 30-6-84 and engaged on work. He was interviewed on 27-4-85. As per settlement dated 17-11-87, temporary employees working for 30, 70 days during 1-7-75 to 31-8-88 are eligible for absorption against permanent post. That as per advertisement dated 1-8-88, he worked for 90 days during relevant period. He was called for interview on 22-9-89/ 23-9-89. he was interviewed, he was selected for absorption on permanent post. On 16-8-94, he was called by Branch Manager. He was told that on submission of affidavit, he would be allowed to join. He submitted affidavit on 15-8-94. He was working against vacant post from 17-8-94. He completed 240 days continuous service. He was orally discontinued from 3-12-95. His services were terminated without notice, he was not paid retrenchment compensation. On 11-12-98, other employees Mukesh, Sham, Sanjay, Harish, Roop Naryan and others were paid retrenchment compensation. He was not called for interview in 1997 as he was earlier interviewed in 1989. That during the period 17-8-94 to 30-11-95, he worked for 470 days excluding holidays 383 days. He was not paid bonus. He reiterated that his services

were terminated without notice, retrenchment compensation was not paid to him. He was rendered unemployed. Bonus was not paid to him. On such grounds, he prays for regularization of his services.

3. IIInd party filed Written Statement at Page 7/1 to 7/11 denying claim of workman. That Shri Ram Nagwanshi General Secretary of Daily Wage Employees Union is not concerned with IIInd party. The reference is not tenable. IIInd party has also referred to award passed in R/194/99 and submits that claim of workman is not tenable. That as per settlement between management and Union, the applications were called by public notice from daily wage employee working during 1-7-75 to August 1991. 67 applications were received. The daily wage employee were called for interview on 6-5-91. Name of workman was not found in the seniority list therefore he could not be appointed. Shri R. Nagwanshi is not a employee, he has no locus standi to represent the workman. IIInd party submits that during 1-4-84 to 30-6-84, workman worked for 92 days, during 94-95 for 84 days, in 1995-96 for 135 days. The workman was engaged as casual daily water. His discontinuation is covered under Section 2 (oo) (bb) of ID Act,. IIInd party denies workman completed 240 days continuous service provided Section 25 B of ID Act. The settlement dated 17-11-87, 16-7-88, 20-10-88 were extended till 14-8-91 providing opportunity for selection on permanent post. It is reiterated that workman had worked for 92 days during cut off period. It is denied that workman worked for 470 days during the period. Violation of Section 25-F ID Act is denied. On such contentions IIInd party submits that workman is not entitled to any relief.

4. Ist party has submitted rejoinder at Page 9/1 to 9/3 reiterating his contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of Asstt. General Manager, State Bank of India, Bhopal in not regularizing the services of Shri Ashok Sisodia is justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

#### **REASONS**

6. The terms of reference relates to denial of regularization of services of Ist party workman. The terms of reference do not include any other grievance like non-payment of bonus to the workman.

7. Workman filed affidavit of his evidence supporting contentions of his claim. That he was interviewed on 22-9-89 considering that he worked 92 days during 1-4-84 to 3-6-84. From 17-8-92, he was engaged on post of messenger. He was discontinued from 30-11-95 without notice. Retrenchment compensation was not paid to him. In 1997, other persons were called for interview and appointed by IIInd party. In his cross-examination, workman says he worked in the Bank from 1-4-84 to 30-6-84. He had not submitted application for employment. He was interviewed on 27-4-85. Appointment letter was not issued to him. He was continuously working from 17-9-94 to December 1995. The settlement between management and Union was for regularization of casual employees. After application submitted by him, he was called for interview on 27-4-85. He claims ignorance about the select list. He admits he worked for 135 days during 1994 to 1995-96. The suggestion is denied that his name was not included in select list.

8. Management's witness Ms. Nirupa Joshi in affidavit of her affidavit of evidence has stated working days of workman during April, 84 to June 84—92 days, in 1994-95 for 84 days, in 1995-96 for 135 days. As cut off date is 14-8-91, working days for 1994-95, 95-96 cannot be considered for regularization as per the settlement. The terms of reference is restricted to denial of regularization to the workman. The legality of termination of workman is not rendered therefore pleadings or evidence about violation of Section 25-F cannot be considered. Management's witness in her cross says that workman was working as per oral orders. Appointment letters was issued to him. Muster register was not maintained. Wages were paid in cash. Workman was not called for interview on 27-4-85. He was called for interview on 22-9-89. Management's witness says select list of 1989 is not produced. Workman was not called for interview in 1997 as he was found unsuitable in 1989. In select list Exhibit M-6, name of workman is not included.

9. Learned counsel for IIInd party relies on ratio held in 2006(5) SCC 173, 2010(9) SCC-126, II(1996) BC 387(SC) & 2014(5) SCC 300. The ratio in above cited cases needs no detailed discussion as on factual matrix, workman has failed to make out his claim for regularization.

10. Management produced documents at Exhibit M-1 to M-6. The settlement between management and Union is not in dispute Exhibit M-1 provides aggregate service of 270, 240, 70, 30 days should be put in by temporary employee as on 31-7-88. Exhibit M-2 has no direct bearing. Exhibit M-4 deals with settlement dated 17-11-87. In select list Exhibit M-6, the name of workman is not found. Any person having less working days than workman is not appointed. Workman has not adduced specific evidence that other candidates having less number of working days

are appointed overlooking his working days. The claim of workman for regularization is not acceptable.

11. The argument advanced by Shri R. Nagwanshi about violation of Section 25-F and non payment of retrenchment compensation cannot be considered in present reference as legality of termination of working is not covered under terms of reference. The pleading ad evidence devoted about violation of Section 25-F of ID Act is beyond terms of reference needs no discussion. For above reasons, I record my finding in Point No.1 in Affirmative.

12. In the result, award is passed is under:—

(1) The action of the management of Asstt. General Manager, State Bank of India, Bhopal in not regularizing the services of Shri Ashok Sisodia is proper and legal.

(2) Workman is not entitled to any relief.

13. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 5 मई, 2015

**का.आ. 933.—** औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट संदर्भ संख्या (93/02) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/05/2015 को प्राप्त हुआ था।

[सं. एल-41012/200/1997-आईआर (बी-1)]

सुमिति सकलानी, अनुभाग अधिकारी

New Delhi, the 5th May, 2015

**S.O. 933.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 93/02) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Railway and their workmen, received by the Central Government on 05/05/2015.

[No. L-41012/200/1997-IR(B-1)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/93/02

Shri Arvind Singh,  
S/o Shri Pannalal,  
Old Basti, Kasturba Ward,

Piparia,  
Distt. Hoshangabad (MP)

...Workman

*Versus*

Divisional Railway Manager,  
Central Railway,  
Jabalpur Mandal,  
Jabalpur

...Management

#### AWARD

Passed on this 30th day of March, 2015

As per letter dated 7.6.2002 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No.L-41012/200/1997-IR (B-I). The dispute under reference relates to:

"Whether the action of the management of DRM, Central Railway, Jabalpur in terminating the services of Shri Arvind Singh S/o Shri Panna Lal *w.e.f.* 1989 is justified? If not, what relief the concerned applicant is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at page 2/1 to 2/4. Case of workman is that he was working as casual labour/MRCL under PWI, Sohagpur from 1979 to 1989 (broken period—total working says—2070 days. Service card is in possession. Workman was arbitrarily stopped from 19.3.89. Workman was not received any notice in writing. He was orally stopped from work without allowing any opportunity for defence. That workman was enjoying temporary status. He was drawing monthly pay therefore his services could not be terminated without following proper procedure under Discipline and Appeal Rules.

3. Workman submit that his representations to DRM, Jabalpur, were not considered. Workman raised dispute before ALC, Jabalpur, On failure report submitted by ALC to Ministry of Labour, the dispute was not referred on the ground of delay. Only after direction issued by High Court in Writ Petition No. 240/02, the dispute has been referred. It is reiterated that his services are terminated in violation of Article 311(2) of constitution, that discontinuation from work is in violation of Article 311(2) of constitution, that discontinuation from work is in violation of discipline and appeal rules. On such ground, workman prays for reinstatement with consequential benefits.

4. 2nd party filed Written Statement on 5.2.09 opposing claim of workman. Preliminary objection is submitted that the dispute is raised after lapse of 9 years is not tenable. The Railway records of casual labours are preserved for 5 years as per the rules. After prescribed limit, the record is destroyed. It is submitted that workman was working on

permanent basis but he was not regular in his duty. He was unauthorisely absent from 18.1.90 to 18.2.91. Chargesheet for major penalty was issued to workman. The workman remained absent during enquiry. Charges alleged against workman were proved. Therefore punishment of removal from service was imposed against workman. It is reiterated that chargesheet was issued to workman for unauthorized absence and for proved charges, punishment of removal imposed against workman is legal. It is further submitted that if workman was suffering from illness, he should have admitted in Railway Hospital Sohagpur where free treatment is provided to Railway employees. Railway employees are bound to report his sickness to Railway Hospital and Officer incharge. It is submitted that enquiry conducted against workman is proper and legal. Removal of workman is also legal. It doesnot call for any interference.

5. As per order dated 11.11.2013, enquiry was found legal.

6. Considering pleadings on record and findings on enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- (i) Whether the charges alleged In Negative  
against workman are proved  
from evidence in Enquiry  
proceedings?
- (ii) Whether the punishment of  
removal imposed against In Negative  
workman is proper and legal?
- (iii) If not, what relief the  
workman is entitled to?" As per final order

### **REASONS**

As per order dated 11.11.2013, enquiry conducted against workman is found proper and legal. Issue No. 1 is framed whether management is entitled to prove misconduct in Court. Issue has become redundant after enquiry is found legal, only evidence in Enquiry Proceedings needs to be considered for deciding whether the charges alleged against workman are proved or not. Management is not required to prove the charges in Court. Workman has not participated in reference proceedings. No evidence is adduced by workman. Management's witness Ramsingh Patel filed affidavit of his evidence. The documents Exhibit M-1 to M-6 are proved from his evidence. Management's witness was not cross-examined. Perusal of documents proved by IIInd party shows as per letter Exhibit M-1, it was informed that the old record relating to workman was not

traced. The record was damaged. Exhibit M-2 is notice of enquiry issued to workman, enquiry was fixed on 28.6.91. Exhibit M-3 is order of punishment of removal from service dt. 21.9.91. Exhibit M-4 is notice of enquiry fixed on 3.8.91. Exhibit M-5 is order of appointment of Enquiry Officer Shri O.P. Tiwari, M-6 is chargesheet issued in standard form finds enclosure attached with it of 331 days. It is difficult to understand whether the Annexure is about absence from duties. The number of working days shown in Annexure are considered. The same appears to be working days. Except those documents, any evidence recorded before Inquiry Officer is not produced. Any document produced before Enquiry officer are also not produced. When there is absolutely no evidence about unauthorized absence of workman, alleged chargesheet Exhibit M-6. The charges are not supported by any evidence. Even report of Enquiry Officer is not on record.

8. As per Exhibit M-3, the punishment order was issued on 21.9.91 for unauthorised absence from 18.1.90 to 18.2.91. There is no report of Enquiry Officer, enquiry proceedings recording evience of any witness is produced. Charges against workman are not proved therefore I record my finding in Point No. 1 in Negative.

9. Point No. 2—In view of my finding in Point No. 1 charges against workman are not proved, punishment of dismissal form service of workman cannot be sustained. The workman cannot be blamed for delay. When dispute was raised, Govt. refused to refer the dispute. Workman had approached Hon'ble High Court and only after order passed by High Court, the dispute was referred. IIInd party was party to conciliation proceeding as well as party to Writ Petition filed before Hon'ble High Court.

10. Considering the facts, dismissal order cannot be sustained as charges are not proved from evidence in Enquiry Proceedings. Workman deserves to be reinstated. The dispute was referred after about 9 years and workman has not adduced any evidence that he is unemployed therefore claim for back wages cannot be accepted. The reinstatement of workman without backwages deserves to be allowed. Accordingly I record my finding in Point No. 2.

11. In the result, award is passed as under:—

- (1) The action of the management of DRM, Central Railway, Jabalpur in terminating the services of Shri Arvind Singh S/o Shri Panna Lal w.e.f. 1989 is quashed.
- (2) IIInd party is directed to reinstate workman with continuity of service but without backwages.

12. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R.B. PATLE, Presiding Officer

नई दिल्ली, 5 मई, 2015

**का.आ. 934.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंदौर मर्ज़ड एज भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट संदर्भ संख्या (118/03) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/05/2015 को प्राप्त हुआ था।

[सं. एल-12012/161/2002-आईआर (बी-1)]

सुमिति सकलानी, अनुभाग अधिकारी

New Delhi, the 5th May, 2015

**S.O. 934.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 118/03) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of Indore Merged as State Bank of India and their workmen, received by the Central Government on 05/05/2015.

[No. L-12012/161/2002-IR(B-1)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/118/03

Shri Mandakini Vyas,  
W/o Shri Shankarlal Vyas,  
H. No. 189, Siddhpuram Colony,  
Annapurna Road,  
Indore

...Workman

#### VERSUS

General Manager (Operations),  
State Bank of Indore,  
Merged as State Bank of India  
Local Head Office,  
Hoshangabad Road,  
Bhopal

...Management

#### AWARD

Passed on this 13th day of April, 2015

1. As per letter dated 30.06.03 by the Government of India, Ministry of Labour, New Delhi, the reference is

received. The reference is made to this Tribunal under Section-10 of I.D.Act, 1947 as per Notification No.L-12012/161/2002-IR(B-I). The dispute under reference relates to:—

"Whether the action of the management of General Manager (O), State Bank of Indore in terminating the services of Smt. Mandakini Vyas W/o Shankarlal Vyas w.e.f. 13-1-2000 is justified? If not, what relief the workman is entitled?"

2. After receiving reference, notices were issued to parties. Workman submitted statement of claim at Page 3/1 to 3/3. Case of workman is that she was working in management Institute Indore where State Bank of Indore opened extension counter in Naulakha branch. Thus workman was already working. She was taken into service of IIInd party Bank in extension counter. She expected confirmation in service. Ist party workman and other staff of extension counter made constant efforts through personal contacts with the persons residing in that area attracting banking transactions and securing the customers. That workman was provided employment as full time job of peon. She accepted the job showing her relationship with institute of management. However she was treated as daily wage employee. She was not appointed for stipulated period. She rendered services from 2-8-98 without break. That she rendered continuous service under Section 25B of ID Act. It is alleged that instead of confirming him in service, IIInd party discontinued her. Her services were terminated without issuing notice, retrenchment compensation was not paid to her. She completed 490 days service during the period 2-8-98 to 13-1-00. Her services are terminated in violation of Section 25-F of ID Act. The record of her service like Attendance Register, payment vouchers, peon book are in custody of IIInd party. She prayed for production of record of her service by IIInd party. For violation of section 25-F of ID Act, workman prays for reinstatement with consequential benefits.

3. IIInd party filed Written Statement at page II/1 to 11/7 opposing claim of IIInd party. IIInd party submits that service conditions of workman employed by Bank are covered by Sastri Award, Desai Award, Bipartite settlements. As per the awards and settlements sub staff of the Bank are entitled to different kinds of leave like Sick Leave, Casual Leave, privilege leave. Considering pendency of sub staff remaining absent from duty without notice, the daily wagers are also engaged whenever there is temporary workload. Workman was not sponsored through Employment Exchange for empanelment. She was engaged as casual labour in Naulakha branch, extension counter for cleaning, sweeping premises 2-3 hrs. She was paid wages. Her engagement came to end on each of the day. There is no employer employee relationship. Workman was not appointed following selection process. The reference is not tenable, it deserves to be rejected. IIInd party reiterates

that the workman was not appointed following recruitment process. She was engaged on daily wages on casual basis. Her services automatically stood terminated.

4. IIInd party referred ratio held in various cases emphasizing that workman was not appointed by the Bank. There is no employer employee relationship. The dispute is referred after long lapse of time is barred by latches. Workman is not entitled to any relief. It is also submitted that workman had not completed 240 days continuous service. She is not entitled to any relief.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of General Manager (O), State Bank of Indore in terminating the services of Smt. Mandakini Vyas W/o Shankarlal Vyas w.e.f. 13-1-2000 is justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

### REASONS

6. Ist party workman has challenged termination of her services for violation of Section 25-F of ID Act. She has contented that she was continuously working from 1998 to 2000. Workman filed affidavit of her evidence however she remained absent for her cross-examination. Therefore her evidence cannot be considered.

7. Management failed to adduce evidence. Evidence of management was closed on 7-10-2014. Workman has failed to appear for her cross-examination. Therefore her evidence cannot be considered. Management has not adduced evidence. The parties failed to properly participate in the reference proceeding. For want of evidence, the contentions of workman cannot be accepted. Therefore I record my finding in Point No. 1 in Affirmative.

8. In the result, award is passed as under:—

- (1) The action of the management of General Manager (O), State Bank of Indore in terminating the services of Smt. Mandakini Vyas W/o Shankarlal Vyas w.e.f. 13-1-2000 is proper and legal.
- (2) Workman is not entitled to any relief.

9. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R.B. PATLE, Presiding Officer

नई दिल्ली, 5 मई, 2015

**का.आ. 935.**—औद्योगिक विवाद अधिनियम, 1947, (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक, के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 132/03) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/05/2015 को प्राप्त हुआ था।

[सं. एल-12012/1/2002-आईआर (बी-1)]

सुमिति सकलानी, अनुभाग अधिकारी

New Delhi the 5th May, 2015

**S.O. 935.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 132/03) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 05/05/2015.

[No. L-12012/1/2002-IR (B-1)]

SUMATI SAKLANI, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/132/03

General Secretary,  
Daily Wages Bank Employees Association,  
Hardev Niwas, 9,  
Sanwer Road, Ujjain ...Workman/Union

### VERSUS

Asstt. General Manager,  
State Bank of India,  
Zonal Office, Hamidia Road,  
Bhopal (MP) ...Management

### AWARD

Passed on this 21st day of April 2015

1. As per letter dated 24-7-03 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-12012/1/2002-IR (B-I). The dispute under reference relates to:—

"Whether the action of the management of Asstt. General Manager, State Bank of India, Bhopal in

terminating the services of Shri Suresh Bagora *w.e.f.* 11-12-98 and not regularizing him is justified? If not, to what relief workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 3/1 to 3/5 through General Secretary, Daily Wage Bank Employees Union, Ujjain. Case of Ist party is workman was engaged for cleaning, sweeping work from 23-3-93 by Branch manager Mr. Bapat at Marimata square Indore branch. He was working with devotion. Everyday between 8.30 to 10.30 AM, he was doing work of cleaning, sweeping, filling water. From 10.30 AM to 6 PM, he was performing work of messenger. Workman was paid Rs. 15/- to 25/- per day for sweeping etc. work. He was paid Rs. 600 to 1200 per month for other works performed by him. On 11-12-98, Branch Manager called him that correspondence was received. On request of workman, Branch Manager told his services were discontinued.

3. Workman submits that he had completed 240 days continuous service. His services were not regularized. Bonus was not paid to him. Dispute was raised before ALC. In proceeding before ALC, IIInd party had admitted his working and agreed to pay bonus. Workman has shown his working days in Para-14 of his statement of claim. 180 days in 1994-95, 330 days in 1995-96, 365 days each in 96-97 & 97-98 - 269 days in 1998-99. Workman submits that his services are terminated without retrenchment notice, list of daily wage employees was not displayed on notice board. He was not paid retrenchment compensation. Considering his plea, last pay Rs. 650 in extension site and Rs. 1200 pm for his working in MPEB. Workman submits that he was paid Rs. 2665/- whereas other employee Trilok Chand was paid retrenchment compensation and notice pay Rs. 15,795/-. On such ground, workman prays for his reinstatement with back wages.

4. IIInd party filed Written Statement at Page 11/1 to 11/12 opposing claim of the workman. Preliminary objection is raised that Shri R.Nagwanshi is not an employee of the Bank, he has no locus to represent workman. IIInd Party has shown working days in Para-1 of the Written Statement. During the year 1995-96, 98-99, his working days are shown more than 240 days every year. IIInd party submits that workman was engaged on contract basis on daily wages for discontinuation of work at the end of the day, his services were terminated is covered under Section 2(oo) (bb) of ID Act. The discontinuation of workman does not amounts to illegal retrenchment. *W.r.t.* settlement dated 17-11-87, 16-7-88, 27-10-88 & 9-1-99, the period was extended till 14-8-91. Daily wage employees were given opportunity for absorption as permanent employee. Workman had not worked in the Bank prior to 14-8-91 therefore his claim could not be considered under the scheme. The services of workman were discontinued. He was paid wages Rs. 2665/- and retrenchment compensation Rs. 5850/-. Workman was not

appointed on permanent post. His engagement was on contract basis. Workman is not entitled for regularization of his services as per the settlements. All adverse contentions of workman are denied. It is reiterated by IIInd party that workman was paid retrenchment compensation Rs. 5850/-, provisions of section 25-F of ID Act are not violated. It is denied that IIInd party has violated section 25-G of ID Act. Shri Trilok Chand was interviewed and found suitable therefore he was appointed in the Bank. Workman is not entitled to reinstatement with back wages. On such ground, IIInd party prays for rejection of claim.

5. Ist party workman submitted rejoinder at page 14/1 to 14/3 reiterating his contentions in statement of claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) "Whether the action of the management of Asstt. General Manager, State Bank of India, Bhopal in terminating the services of Shri Suresh Bagora <i>w.e.f.</i> 11-12-98 and not regularizing him is justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

#### REASONS

7. The terms of reference includes legality of termination of services of workman and denial of regularization to him in service. So far as claim for regularization of service of workman, the settlements is produced by IIInd party of Exhibit M-1. The relevant clause at Page 3 deals with the aforesaid aggregate temporary service of 270 days, 240, 70,30 would have been put in by temporary employee at any one or more of the offices of branch as on 31-7-88. Said scheme was extended till 14-8-91. As per statement of claim submitted by workman, he was engaged by IIInd party in the year 1993 after the cut off date 14-8-91. Therefore workman cannot be extended benefit of settlement since he is engaged after cut off date. Though Union Representative Shri R. Nagwanshi submitted that the name of workman was included in select list, I do not find name of workman in Select list Exhibit M-6 even after examining the list minutely. The statement of claim submitted by workman is silent when he was called for interview. He has not disclosed the date of interview. There is absolutely no basis for including his name in the select list.

8. *W.r.t.* termination of his service in violation of Section 25-F, G of ID Act, IIInd party in its Written Statement had admitted working days of workman 330 days in 95-96,

365 days each in 1996-97 & 97-98, 269 days in 1998-99. Workman is therefore covered under Section 25 B of ID Act, He is entitled to termination under Section 25-F.

9. IIInd party has contented that workman was paid retrenchment compensation Rs. 5850 before termination of his services. The documents produced by Ist party have been admitted P-23.

10. Workman filed affidavit of his evidence supporting his contentions in statement of claim. However he failed to appear for his cross-examination therefore his evidence cannot be considered. As IIInd party has admitted working days of workman more than 240 days every year from 95-96 to 98-99, question remains for consideration whether IIInd party has violated Section 25-F of ID Act.

11. On the point evidence of witness of IIInd party needs to be considered. Management's witness Shri Rajiv Saurabh supporting contentions of IIInd party states that workman was not continuously engaged. Workman was engaged on contract basis on daily wages. Workman was paid retrenchment compensation Rs. 5850/- on 11-12-98 in lieu of retrenchment notice. Wages Rs. 2665/- were paid as wages for 11 days. Evidence of management's witness is devoted on the point that provisions of Section 25-G of ID Act are not applicable in the matter. When evidence of management's witness shows that workman worked more than 240 days continuous service, provisions of Section 25-G of ID Act are applicable. Evidence of management's witness is silent about preparing and displaying notice of casual temporary employees at the time of termination of service of workman. As per ID Rule 77, the termination of services of workman would be illegal.

12. Management's witness in his cross says any process was not followed before engaging workman. Permission of competent authority was not taken, appointment letter was not issued to workman. He admitted documents Exhibit W-1, W-2 about period of working by workman. The contract of engagement of workman was oral, documents were not produced. When management's witness was not working in IIInd party branch during 1993 to 1998 admitted in his cross-examination, evidence of management's witness on the point cannot be accepted. The services of workman are discontinued/terminated in violation of Section 25-G of ID Act therefore I record my findings in Point No. 1 in partey Negative.

13. Point No. 2 In view of my findings in Point No. 1, question remains for decision is whether workman is entitled for reinstatement with backwages. Learned counsel for IIInd party Shri V.P. Khare relies on ratio held in .

Case of Nand Kumar Versus State of Bihar and others reported in 2014(5) SCC 300. Their Lordship dealing with casual labour daily wagers held daily wages are not appointed in strict sense after they do not hold post. It was further held that daily wagers were appointed during proper procedure and hence consequence of their appointment

being temporary was within their knowledge. They cannot invoke theory of legitimate expectation for being confirmed in post.

The facts of present case are not comparable. Ist party workman is not entitled to regularization as per settlements as he was engaged after cut off date 14-8-91. The ratio in above cited case cannot be beneficially applied. The termination of services of workman are terminated in violation of Section 25 G of ID Act. Workman was working as casual daily wage employee during 93 to 98, reasonable compensation would be appropriate. Considering the working period of Ist party, compensation Rs. One Lakh would be appropriate.

14. In the result, award is passed as under:—

- (1) The action of the management of Asstt. General Manager, State Bank of India, Bhopal in terminating the services of Shri Suresh Bagora is not proper and legal.
- (2) IIInd party is directed to pay compensation Rs. One Lakh to the workman within 30 days from the date of publication of award.

In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

15. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R.B. PATLE, Presiding Officer

नई दिल्ली, 5 मई, 2015

**का.आ. 936.—**—औद्योगिक विवाद अधिनियम, 1947, (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंदोर मर्ज़ड इन भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 144/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/05/2015 को प्राप्त हुआ था।

[सं. एल-12012/516/98-आई आर (बी-1)]

सुमिति सकलानी, अनुभाग अधिकारी

New Delhi, the 5th May, 2015

**S.O. 936.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 144/99) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of Indore Merged in State Bank of India and their workman, received by the Central Government on 05/05/2015.

[No. L-12012/516/98-IR(B-1)]

SUMATI SAKLANI, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL-CUM-LABOUR COURT,  
JABALPUR**

**No. CGIT/LC/R/144/99**

Shri Purushottam Namdeo,  
S/o Munnalal Namdeo,  
R/o Parashar Mohalla,  
Opp. Hanuman Mandir,  
Ashok Nagar,  
Distt. Guna (MP)

...Workman

**VERSUS**

General Manager,  
State Bank of Indore,  
Head Office, 5, Yeshwant Niwas Road,  
Indore  
Merged in State Bank of India

...Management

**AWARD**

Passed on this 6th day of April, 2015

1. As per letter dated 26/26-3-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/516/98/IR(B-I). The dispute under reference relates to:

"Whether the action of the management of General Manager, State Bank of Indore in terminating the services of Shri Purushottam Namdeo S/o Munnalal w.e.f. 18.11.97 is justified? if not, the what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim at Page 5 to 11. Case of workman is that he was engaged as peon/sweeper, farash at Ashok Nagar branch of State Bank of Indore, Distt. Guna during May-94 to Nov-97. He had continuously worked more than 240 days during preceding year of his termination. That IIInd party dismissed his services from 10-11-97 without giving retrenchment compensation. Termination of his service is in violation of Section 25-F of ID Act. It is illegal retrenchment. Ist party further submits that IIInd party had continued persons junior to Ist party workman in violation of Section 25-G of ID Act. Workman was illegally retrenched. Termination of Ist party workman is violative of rules made under ID Act, Articles 14, 16 of the constitution. On such ground, workman is praying for his reinstatement with backwages.

3. IIInd party filed Written Statement denying claim of Ist party workman. preliminary objection is raised that workman was not Bank employee. He was purely temporary, workman engaged for few hours as Ist party was not appointed as employee, provisions of ID Act are not applicable. It is further submitted that Section 25B, F, G of ID Act are not applicable in the matter. IIInd party further contends that workman was engaged on contingency basis as and when his services were required for cleaning, sweeping. Workman was paid wages agreed to him. Even if it is presumed that he was engaged as contingent employee on part time basis, provisions of ID Act are not applicable to such employee. That recruitment of peon sweeper cum farash is made after publication of advertisement in news paper calling names from Employment Exchange. Ist Party was not appointed following such procedure. The Bank employed two peons. In view of their appointment, there was no need of any other peon in the Bank. That workman as informed that the contingency services will not be required. It is further contented that part time employee is not covered under ID Act. Workman had not completed 240 days continuous service. As workman was never appointed by the Bank, question of termination/retrenchment compensation does not arise. Case of workman is not covered under provisions of ID Act. The Bank has neither appointed nor terminated services of workman. On such contentions, IIInd party prays for rejection of claim.

4. Ist party workman submitted rejoinder at Page 31 to 39 reiterating its contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of General Manager, State Bank of Indore in terminating the services of Shri Purushottam Namdeo S/o Munnalal w.e.f. 18.11.97 is justified?	In Negative
(ii) If not, what relief the Workman is entitled to?	As per final order.

**REASONS**

6. Workman is challenging termination of his service for violation of Section 25-F, G of ID Act. IIInd party has denied all material contentions of workman. Workman filed affidavit of his evidence supporting his claim that he was working with IIInd party continuously as peon/Secretary from May, 94 to Nov., 97. He was continuously working for more than 240 days in calendar year preceding his services

were dispensed with on 10.11.97. That Bisen Sharma and Rajnu Namdev have been engaged by management on post of peon/sweeper. In his cross-examination, workman claims ignorance whether the post on which he was appointed was published in newspaper. He passed 8th Standard. His date of birth is 6.8.78. He claims ignorance whether Bisen Sharma and Raj Kumar have passed 10th, 12th examination and selected following selection process. Workman denied that he was engaged for 2-3 hours. He reaffirmed that he was working for 28 days in a month.

7. Management's witness Shri Raj Keshar Singh Korte in his affidavit of evidence has supported contentions of management in Written Statement that workman was engaged on daily wages for cleaning toilets. He was paid wages Rs. 25, 30, 40 per day during the year 1995 to 1997. That Ist party workman was never engaged on permanent post of peon. Workman has not completed 240 days continuous service. Management's witness in his cross says that he was not working in the Ashok Nagar branch during 94 to 97. He had seen Written and court file before filing affidavit. He did not seen documents about payments made to workman. He was unable to say whether workman was paid wages daily, weekly or monthly. Management's witness was unable to say whether wages were paid to workman after obtaining signature in voucher or wage register. That Attendance Register was not maintained. Workman was engaged by Branch Manager. Management's witness claims ignorance whether any action was taken against Branch manager. That he has not seen any document about attendance of workman. On basis of facts in Written Statement, he filed affidavit of his evidence. That workman had not completed 240 days continuous service. Management's witness claims ignorance whether cash book is permanent record and not destroyed. The evidence of management's witness is not cogent and reliable as he has no knowledge of the relevant documents. Management's witness admits that workman was not paid retrenchment compensation. Workman was not terminated for any other misconduct. He admits that entires of payment vouchers are taken in cash book. If evidence of workman is considered along with evidence of management's witness, evidence of workman is cogent and reliable instead of evidence of management's witness. Therefore I hold that workman had completed 240 days continuous service preceding his termination. His services were terminated without notice, retrenchment compensation was not paid to him. termination of workman is in violation of Section 25-F of ID Act. Therefore I record my finding in Point No. 1 in negative.

8. Point No. 2—In view of my finding in Point No. 1, termination of service of workman is found illegal, question arises whether workman is entitled to reinstatement with back wages. Workman in his cross examination says he passed 8th standard, post was not advertised. He was not

selected following selection process. Therefore workman cannot be reinstated. As per evidence of workman, he worked for about 3 years in the Bank. Considering working period and his engagement on daily wages, compensation Rs. 50,000/- would be appropriate. Accordingly I record my finding in Point No. 2.

9. IN the result, award is passed as under:—

- (1) The Whether the action of the management of General Manager, State Bank of Indore in terminating the services of Shri Purushottam Namdeo S/o Munnalal w.e.f. 18.11.97 is not proper and legal.
- (2) IIInd party is directed to pay compensation Rs. 50,000/- to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

10. Let the copies of the award be sent to the Government of India Ministry of Labour and Employment as per rules.

R.B. PATLE, Presiding Officer

नई दिल्ली, 5 मई, 2015

**का.आ. 937.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 166/01) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/05/2015 को प्राप्त हुआ था।

[सं. एल-12012/154/2001-आईआर (बी-1)]

सुमिति सकलानी, अनुभाग अधिकारी

New Delhi, the 5th May, 2015

**S.O. 937.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.166/01) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 05/05/2015.

[No. L-12012/154/2001-IR(B-1)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/166/01

General Secretary,  
Daily Wages Bank employees Association,

Hardev Niwas, 9, Sanwer Road,  
Ujjain ...Workman/Union

Versus

Asstt. General Manager  
State Bank of India  
Zonal Office, Region-III, Office,  
Hamidia Road,  
Bhopal ...Management

## AWARD

Passed on this 15th day of April, 2015

As per letter dated 31.10.2001 by the Government of India, Ministry of Labour, New Delhi the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/154/2001-IR(B-1). The dispute under reference relates to :

"Whether the action of the management of State Bank of India not regularizing the services of Shri Gopalkrishna Sarsia S/o Kashiram is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 4/2 to 4/7. Case of Ist party is that Bipartite Settlement was arrived on 27-10-88. As per settlement, daily wage employees working 270 days, 240 days, 70 days, 30 days were eligible for absorption on permanent post. IInd party had advertised for appointment on permanent post. Workman had submitted application. He was called for interview on 19-2-97 as well as on 20-2-97. He was interviewed on 19-2-97. He was issued appointment letter dated 31-3-97 as Sub Staff part time General Attendant cum sweeper/Farrash/messenger at Jhawar branch. Workman was directed to remain present along with documents. In case of his failure, the appointment letter stands cancelled. Workman submits on 15-4-87, he had attended Jhawar branch for joining duties. Branch Manager did not allow him to join on the ground that he was busy. He was directed to come afterwards. On 25th April he again attended branch for joining duty. Branch Manager did not allow him to join. Workman was given closed envelope directing him to submit certificate of medical examination from Indore. When he opened the letter, name of doctor was not mentioned in it. Workman repeatedly approached Branch Manager but he did not get any response.

Workman further contents that he had submitted representations that as part time employee, it was difficult for him to give HRA and maintain his family, he requested appointment at any branch at Indore, the request was not considered. Any reply was not given. The Union had also raised his grievance to consider his request sympathetically. As IInd party did not gave any response, the dispute was raised. Ultimately Government has referred the dispute. It is reiterated that Branch Manager Jhawar did not allow him

to join duty on 15th April, 25th April, 1987. His request for appointment is any branch at Indore was not considered. The letter given by Branch Manager was not disclosing the name of Doctor for his medical examination. On such ground, workman prays for part time appointment at Indore and any other appropriate relief.

4. IIInd party submitted Written Statement at Page 11/1 to 11/5 opposing claim of workman. Preliminary objection raised that Shri Ram Nagwanshi is dismissed employee of SBI is not competent to prosecute the dispute under reference. After failure of conciliation, the dispute is referred by Government it is further contented that as per settlement dated 17-11-87, 16-7-88, 28-10-88, 9-1-91, the daily wage employees discontinued during 1-7-75 to 31-7-88 were called for interview, list of selected candidates was prepared. Workman was also selected. Appointment letter was issued to workman on 31-3-97 posting workman at Jhawar Branch. Workman was called with certificates on 15-4-97. Workman did not produce certificate of his medical examination. Workman has represented that his brother Gopi was in Bank service. He had complete knowledge about the Doctor. Workman did not report. Thereafter he was not willing for employment. Workman had requested appointment in any branch at Indore. His request could not be accepted. It is reiterated that appointment letter dated 31-3-97 was issued as part time General Attendant Sweeper/ Farrahr/Messenger. Workman failed to join as per the appointment letter. It is denied that workman was not allowed to join duty on 25-4-97. It is reiterated that workman had submitted that his brother Gopi was in Bank service and he had full knowledge about the name and address of the Doctor for medical examination. On such contentions, IIInd party submits that workman is not entitled to any claim.

5. Ist party workman submitted rejoinder at Page 12/1 to 12/2 reiterating his contentions in statement of claim. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of State Bank of India in not regularizing the services of Shri Gopalkrishna Sarsia S/o Kashiram is justified? In Negative

(ii) If not, what relief the workman is entitled to?" As per final order

## REASONS

6. Terms of reference pertains to denial of regularization to Ist party workman, as per pleadings between parties,

there is no dispute that as per Bipartite Settlements, workman was called for interview after his selection, appointment letter was issued to workman on 31-3-97.

7. Workman filed affidavit of his evidence supporting his contentions that after his interview on 19-2-97, appointment letter was issued to him on 31-3-97. He reported Jhawar on 25-4-97. He was directed to submit medical certificate from Doctor at Indore. The name of Doctor was not mentioned in the letter. Workman remained absent for his cross-examination. His evidence cannot be considered on that ground. The copies of settlements are produced are admitted.

Settlement dated 17-11-87, Para 3(II)(ii)(b) provides—

"The aforesaid aggregate temporary service of 270 days, 240 days, 70 days or 30 days should have been put in by a temporary employee at any one or more of the offices/branches falling within a module as existing/defined as on 31-7-88."

Para 6 and 7 provides—

If the waiting list prepared after completion of interviews of the temporary employees in subordinate cadre who had completed 90 days of service and above as on 31st October, 1984 has not yet been exhausted, it will be valid upto the 31st July, 1988 and vacancies arising up to that date should be filled from this panel.

The admitted documents are inadvertently marked as D-1 to D-5 instead of M-1 to M-5. The copy of select list D-6 name of Ist party appears at Page 114 in Ex-servicement in Caste wise category with remark "appointed".

8. Management's witness Shri Prahlad Sarangpur submitted his affidavit supporting contentions in Written Statement filed by management, that as per Bipartite settlement, workman was called for interview on 19-2-97, appointment letter was issued on 31-3-97. Workman did not submit required certificate. Workman abandoned job. Workman could not be appointed at the places of his choice at Indore. Management's witness in his cross-examination admits workman was called interview, his name was in select list, appointment letter was issued to him. Workman had attended for joining duty. Workman did not submit medical certificate. There was no condition in appointment letter-Exhibit W-3 to produce medical certificate. In letter W-4, name of Doctor was not mentioned, no reminder was issued to workman for producing medical certificate.

9. Daily wage employees are given benefits for absorption against permanent post by Bipartite Settlement, management has not even taken care to issue reminder to the workman to produce medical certificate. Appointment letter Exhibit W-3 does not contain such condition. There is no cogent evidence that the brother of workman was in service at Indore and he was knowing the details of

documents from whom the workman is to be examined. The evidence of management's witness is clear that any notice was not issued to workman for cancellation of his appointment on the ground of its failure to produce medical certificate. When workman was interviewed and he was selected and appointment letter was issued to him as part time sweeper/messenger etc. It is difficult to believe that workman himself has abandoned the job. For above reasons, I record my finding in Point No. 1 in Negative.

10. Point No. 2-workman was interviewed and he was selected for post of part time sweeper messenger, appointment letter was issued on 31-3-97. Workman was directed to submit medical certificate by Branch Manager, Jhawar. The pleadings of Ist party workman in his statement of claim shows that he had requested for appointment in any branch at Indore. It is difficult to pay HRA and maintain his family as part time employee at Jhawar. Workman has not appeared for his cross-examination and his evidence cannot be considered. There is no evidence on record as to what work workman is doing after 25-4-97. Therefore workman cannot be awarded backwages. However workman is entitled for regularization as part time sweeper/messenger as per appointment letter dated 31-3-97. Accordingly I record my finding in Point No. 1.

11. In the result, award is passed as under:—

- (1) The action of the management of State Bank of India in not regularizing the services of Shri Gopalkrishna Sarsia S/o Kashiram is not proper.
- (2) If party is directed to allow workman to work as part time sweeper/messenger as per appointment letter dated 31-3-97. The claim of workman w.r.t. back wages is rejected.

12. Let the copies of the award be sent to the Government of India, Ministry of Labour and Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 5 मई, 2015

**का.आ. 938.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंडॉर मर्जर विद भारतीय स्टेट बैंक प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 50/00) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/05/2015 को प्राप्त हुआ था।

[सं. एल-12012/405/99-आईआर (बी-1)]

सुमिति सकलानी, अनुभाग अधिकारी

New Delhi, the 5th May, 2015

**S.O. 938.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 50/00) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of Indore Merged with State Bank of India and their workmen, received by the Central Government on 05/05/2015.

[No. L-12012/405/99-IR(B-1)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
JABALPUR**

**No. CGIT/LC/R/50/00**

General Secretary,  
Daily Wages Bank employees Association,  
9, Sanwar Road, Ujjain

...Workman/Union

#### Versus

Assistant General Manager-I,  
State Bank of Indore, Head Office,  
5, yeshwant Niwas Road, Indore  
(Merged with State Bank of India)  
Managing Director,  
State Bank of Indore, Head Office,  
5, Yeshwant Niwas Road, Indore  
(Merged with State Bank of India)

...Management

#### AWARD

Passed on this 17th day of April, 2015

1. As per letter dated 18-2-00 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/405/99/IR(B-1). The dispute under reference relates to:

"Whether the action of the management of State Bank of Indore in not regularizing Smt. Kamla Bai W/o Shri Manohar Kalyan after completing more than 240 days in a calendar year and not paying 1/2 the wages is justified? If not, to what relief the workman is entitled for?

2. After receiving reference, notice were issued to the parties. On behalf of the Ist party Smt. Kamla Bai, statement of claim is filed by Shri Ram Nagwanshi, Union

Representative. The case of workman is that she is member of Daily Wage Bank Employees Union. Since last 20 years, she is working in Raja Mohalla Branch Indore of IIInd party doing cleaning sweeping work. Work of peon/farrash was also extracted from her in addition to the cleaning work. Workman was paid daily wages by IIInd party. Its record is with IIInd party. On 1-12-1998, on advice of Branch Manager, Shri R.L. Kuiya, she had submitted application. Para-3 of the application was deleted on advice of Branch Manager as he assured that he would certify about here working. The acknowledgement of application was given to her by Branch Manager. Workman further submits that she was working as permanent peon in leave vacancy. She was paid Rs. 30, 40 per day for additional work of peon. After voluntary retirement of permanent peon Shri Mayaram and death of Shri L.N. Purohit, the post was not filled. She was continuously working since past 20 years as peon. Workman has prayed for regularization submitting that she would not claim anything for the past service. In the Indian Bank Branch Indore peon Kamlesh was paid half wages of the pay scale. On such contentions, workman prays for regularization of her service.

3. IIInd party filed Written Statement opposing claim of the workman. It is submitted that IIInd party is established under Banking Company's Act 1959. The Bank has branches in different cities. Bank has rules and regulations for appointment of Class III, IV employees called sub staff. The Branch Manager has no authority to appoint peon messengers, security guard on permanent post. The appointment are made following recruitment rules, workman was not working as permanent peon in the Bank at any time. Her services were engaged for sweeping, cleaning work. The Branch was opened about 1 1/2 hours before for cleaning work. As per exigencies, workman worked as casual daily wage employee for 2 hours. Workman has no right for regularization of her services. Workman was not terminated by IIInd party. She had not completed 240 days continuous service as claimed. There is no employer employee relationship. Ist party is not covered as workman under ID Act. Only on completion of 240 days continuous service, she does not get right for regularization.

4. IIInd party has referred to ratio held in various cases and reiterates that workman is not entitled for regularization of her services. That Shri Ram Nagwanshi General Secretary of Daily Wage Bank employees is dismissed from service. Thus he is not competent to represent the workman.

5. Ist party filed rejoinder reiterating its contentions in statement of claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of State

In Affirmative

Bank of Indore is not regularizing Smt. Kamla Bai W/o Shri Manohar Kalyan after completing more than 240 days in a calendar year and not paying 1/2 the wages is justified?

(ii) If not, what relief the workman is entitled to?" Workman is not entitled to any relief.

### REASONS

7. The terms of reference pertains to denial of regularization and non-payment of 1 1/2 wages to Ist party workman. Workman has failed to adduce evidence in support of her claim. Evidence of Ist party is closed on 19-11-2013. Management's witness Shri Sunil Bundela filed affidavit of his evidence supporting contentions of IInd party that workman was engaged temporarily as per exigencies on daily wages. Wages agreed were paid to her. Workman was never engaged against vacant post following recruitment process. She has no right for regularization. In his cross-examination, management's witness denied that workman was doing cleaning, sweeping work since past 20 years. Management's witness claims ignorance since when workman was working in the Bank. For engaging workman as causal temporary basis, any process for selection was not followed. Management's witness denied that building of Rajmohalla is double storied. He has not discussed the matters with Branch Manager. It is denied that workman was not paid wages as per settlement. Management's witness did not remember at what rate the workman was paid her wages. Management admitted document Exhibit W-1 reply submitted before ALC. IInd party has admitted that Smt. Kamla Bai was doing work of sweeping, cleaning work of bathroom etc. IInd party had denied workman was working as peon in leave vacancy. Document Exhibit W-2 is copy of policy resulting to working less than 3 hours used to be paid @ Rs. 750/- per month. If part time employee works between 3-6 hours such employees will be paid Rs. 1500/- per month. Workman has not adduced any evidence about here working hours therefore her claim for payment of wages at the rate prescribed under Exhibit W-2 cannot be accepted. For above reasons, I record my finding in Point No. 1 in Affirmative.

8. In the result, award is passed as under:—

- (1) The action of the management of State Bank of Indore in not regularizing Smt. Kamla Bai W/o Shri Manohar Kalyan after completing more than 240 days in a calendar year and not paying 1/2 the wages is proper and legal.
- (2) Workman is not entitled to any relief.

9. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 5 मई, 2015

**का.आ. 939.—**औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंदोर मर्ज़ड विद इन भारतीय स्टेट बैंक प्रबंधतंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 29/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/05/2015 को प्राप्त हुआ था।

[सं. एल-12012/138/97-आईआर (बी-1)]

सुमिति सकलानी, अनुभाग अधिकारी

New Delhi, the 5th May, 2015

**S.O. 939.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 29/98) of the Cent. Govt. Indus. Tribunal-Cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of Indore Merged with State Bank of India and their workmen, received by the Central Government on 05/05/2015.

[No. L-12012/138/97-IR (B-1)]

SUMATI SAKLANI, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

#### No. CGIT/LC/R/29/98

General Secretary,  
All India State Bank of Indore Employees congress,  
Hardev Niwas,  
9, Sanwer Road, Ujjain

...Workman/Union

#### Versus

Dy. General Manager,  
State Bank of Indore, Zonal Office,  
Kanchanbagh, Indore  
(Merged with State Bank of India) ...Management

#### AWARD

Passed on this 24th day of April, 2015

1. As per letter dated 17-19/2/90 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under

Section-10 of I.D. Act, 1947 as per Notification No. L-12012/138/97/IR(DU). The dispute under reference relates to:

"Whether the action of the management of State Bank of Indore in not regularizing Shri Mukesh Sher is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. On behalf of workman, statement of claim is submitted by Shri Ram Nagwanshi, Secretary, Daily Wage Bank Employees Union at Page 3/1 to 3/4. Case of workman is that he was engaged on daily wages as permanent peon at Branch of State Bank of Indore from 1-4-94. He was working with devotion without any grievance against him. He was paid wages weekly under voucher. He completed 240 days continuous service during each of the year. He was paid bonus Rs. 749.65 for 1994-95, Rs. 869.65 for 1995-96. His services were discontinued from 2-3-96, without any notice. Retrenchment compensation was not paid to him. He was covered as employee under Section 25 B of ID Act. His services are terminated in violation of Section 25 of ID Act, Para 507, 524 of Sastry Award. IIInd party not followed principles of last come first go. His services are terminated in violation of Section 25-G, N of ID Act. On such ground, workman prays for reinstatement with back wages.

3. IIInd party filed Written Statement at Page 7/1 to 7/4 opposing claim of the workman. Preliminary objection is raised that General Secretary, Daily Wage Bank Employees has no locus standi to rise the dispute. Workman was not member of said Union. No authority for raising dispute was given. The Union has no jurisdiction to raise dispute. That Managing Director of the Bank is unnecessarily made party. Claim suffers from misjoinder of parties. Statement of claim is not submitted as per rules therefore the dispute is not tenable.

4. IIInd party submits that the casual employees were engaged temporarily as per exigencies for filling water, cleaning work. Casual employee were paid Rs. 10/- per day for filling water, Rs. 25/- per day for cleaning, sweeping work. Workman was not appointed as peon against vacant post. He was intermittently engaged for cleaning, sweeping work and for filling water. Workman has not completed 240 days service. Violation of Section 25-F, G.H of ID Act is denied.

5. Ist party submitted rejoinder at Page 13/1 to 13/4 reiterating his contentions in statement of claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of State

Bank of Indore is not regularizing Shri Mukesh Sher is justified?

(ii) If not, what relief the workman is entitled to?"

In Affirmative  
Workman is not entitled to any relief.

## REASONS

7. The terms of reference covers denial of regularization to workman. Legality of termination of his services is not referred for adjudication.

8. Workman filed affidavit of his evidence. Workman has narrated that he was engaged as peon on daily wages on 1.4.94. He was paid Rs. 25/- per day. The wages were increased to Rs. 45/-. He worked more than 240 days in each of the year. His servies were terminated without notice, retrenchment compensation was not paid to him. One Mahendra was engaged by the Bank after his termination. From his evidence, documents Exhibit W-1 to W-6 are proved. Workman in his cross says that he has passed 8th standard. From 1.4.94 to March 1996, he was working in the Bank. He was doing all work of peon in the Bank. He was submitting vouchers duly filled. Branch Manager was sanctioning the same. The documents Exhibit W-1 is voucher about payment of Rs. 130/-, W-2 is payment of Rs. 325/-, W-3 is payment of Rs. 25/-, W-4 is copy of entry of peon book dated 11.5.95. Exhibit W-5 is copy of entry in peon book. The document about payment of bonus is admitted. It shows payment of wages workman Rs. 750/- per month from April 94 to March 95 and different amount during the period April, 95 to March 96. On said amount, bonus was calculated and paid to the workman.

9. The terms of reference doesnot include termination of service of workman. The dispute under reference relates to denial of regularization. Settlement dated 13.7.93 between management and Union is produced at Exhibit W-6. At Page 2, Item 1, it is clear that one time opportunity for absorption in permanent basis in subordinate cadre as peon cum farrash will be given to temporary employees who have in more than 240 days of service in a period of twelve consecutive months provided they satisfy the eligibility criteria as on the date they were first engaged as temporary employees laid down under the Bank's rules such minimum educational qualifications, age etc.

10. As per pleadings in statement of claim and evidence of workman, he was engaged from 1.4.94 i.e. subsequent to settlement Exhibit W-6. Therefore workman is not covered under Settlement Exhibit W-6. Merely working more than 240 days doesnot confer right for regularization of his service. From said evidence, workman is covered as employee under Section 25 B of ID Act but he doesnot get right for regularization.

11. The evidence of management's witness Umesh Chaturvedi is on the point of workman not completed 240 days continuous service. Management's witness in his cross-examination says workman was not engaged following selection process. Permission of Controlling Authority was not taken before his engagement. Workman was not paid retrenchment compensation, notice of termination was not served on him. MW-2 Sushil Jain has re-affirmed that the workman had not completed 240 days continuous service. He was engaged as per exigencies for 2-3 hours in a day. In his cross-examination, MW-2 admitted Exhibit W-7. The statement of bonus is admitted in evidence at Exhibit M-1. MW-2 also admits that workman was not paid retrenchment compensation. Termination notice was not issued to him. However as discussed above, legality of termination of workman is not included in terms of reference therefore the claim in that regard cannot be decided. So far as claim under reference relating to denial of regularization of workman is not established as workman was engaged subsequent to settlement Exhibit W-6.

12. Incidentally I am also referred to the citation relied by the learned counsel for IIInd party between Mehboob Deepak *versus* Nagar Panchayat, Gajraula and another reported in 2008(1) SCC 575. Their Lordship dealing with termination of service of casual labour held appellants claim for regularization, held not sustainable but having regard to the fact that he had completed 240 days of work and required compliance with the provisions of Section 6-N of the UP Industrial disputes Act compensation Rs. 50,000 was allowed.

In case between State of J&K and others *versus* Sajad Ahmed Mir reported in 2006(5) SCC 766. Claim for compassionate appointment raised after 12 years was not accepted.

Ratio held in both cases cannot be applied to present case at hand as considering the evidence, workman is not covered under Settlement Exhibit W-6. There is no question of regularization of his service. The legality of termination is not covered under terms of reference. Therefore compensation cannot be allowed in present case for violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No. 1 in Affirmative.

13. In the result, award is passed as under:—

(1) The action of the management of State Bank of Indore in not regularizing Shri Mukesh Sher is proper and legal.

(2) Workman is not entitled to any relief.

14. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R.B. PATLE, Presiding Officer

नई दिल्ली, 5 मई, 2015

**का.आ. 940.**—औद्योगिक विवाद अधिनियम, 1947 1947 का 14 की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंदोर मर्ज़ड भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट संदर्भ संख्या (29/94) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/05/2015 प्राप्त हुआ था।

[सं. एल-12012/247/93-आईआर (बी-1)]

सुमिति सकलानी, अनुभाग अधिकारी

New Delhi, the 5th May, 2015

**S.O. 940.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 29/94) of the Cent.Govt.Indus/Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of Indore Merged in State Bank of India and their workmen, received by the Central Government on 05/05/2015.

[No. L-12012/247/93-IR(B-1)]

SUMATI SAKLANI, Section Officer

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/29/94

Shri Ram Nagwanshi,  
General Secretary,  
All India State Bank of Indore Employees Congress,  
9, Sanwer Road, Ujjain

...Workman/Union

*Versus*

General Manager (DGM),  
State Bank of Indore,  
Anchalik Office, Gheema Chambers,  
163, Kanchanbag, Indore  
Merged in State Bank of India

...Management

## AWARD

Passed on this 31st day of March, 2015

1. As per letter dated 24-3-94 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under

Section-10 of LD Act, 1947 as per Notification No.L-12012/247/93-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of State Bank of Indore in not treating the periods from 31-5-84 to 6-5-85 and from 3-3-86 to 3-3-87 as duty withholding one increment with cumulative effect and withdrawal of special allowances for five years in respect of Shri R.P. Nagwanshi, cashier is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 3/3 to 3/11. Case of workman is that from 17-2-08, he was working as cashier-cum-godown keeper in Bank of Indore at Indore. His wife died on 21-7-82. His son was suffering from blood cancer and repeatedly requiring blood transmission. He was transferred from Indore to Patni branch, Ujjain. He taken charge at Patni Bazar. It is submitted that on 4-6-83, Mahalakshmi utensil shop was granted loan of Rs. 10,800 against raise of pressure cooker. That the pressure cookers were not received in godown. Ist party workman further submits that said Donge Maharaj had performed programme of religious sermons. On 8-1-81, amount of Rs. 1360/- was deposited with cashier Madhan Joshi by Mr. Kanhaiyalal. On 29-5-84, entry of Rs.7/- was sent to him through peon book. Workman claims that as he belongs to SC, he was boycotted and amount was sent in such manner. That in collision, employees in Bank had prepared document MEX-1 alleging that workman had burnt papers in the branch. That Ist party workman had behaved indecently with the officers, that 1st party workman had come to a shop and burnt documents in oven. Ist party workman alleged that charges against him were false. That enquiry was conducted against him. The statements of witnesses Smita Bhave and V.N.Vyas were inconsistent. Workman claimed to have false implicated. Earlier report was submitted against him. It was found that any offence was not committed by workman. Proceeding under Section 107 was initiated against Anandila Ito SDM, Ratlam. Shri Garg was released on bail of Rs. 5000/-. It is reiterated that in their statements before Enquiry officer, witnesses were given different versions. That the papers were loose, roled, spread. Workman submits that Enquiry Officer had committed error while submitting his report. Enquiry was not properly conducted. Witnesses Mr. Garg and Mr. Sengar in their statements had said that any misconduct or indecent act was not committed against them by the workman. Despite of it, the punishment of dismissal was imposed against him without notice. In appeal, the punishment was reduced to withholding one increment without cumulative effect. Special allowance was stopped.

Workman submits that order of punishment is illegal and deserves to be quashed.

3. IIInd party filed Written Statement at Page 5/1 to 5/14 opposing claim of workman. IIInd party raised preliminary objection that the reference is barred by limitation. The punishment order was issued on 27-4-85. The dispute is raised after lapse of long time. The transfer of workman from Indore to Patni bazaar branch Ujjain is not disputed. W.r.t. transfer of Ist party workman from Ratlam to Indore, it is submitted that transfer order was wrongly issued due to similarity of names. The incident of burning papers and fraud alleged against workman was reported to Police Station, Manak Chowk on 29-5-84. The charges alleged against workman were different from the allegations in preliminary report. IIInd party further denies that evidence of witnesses was not properly considered by Enquiry Officer. It is denied that findings of Enquiry officer are illegal. Workman was suspended on 3-3-86 w.r.t. charges alleged against him. IIInd party denied that enquiry conducted against workman was illegal. It is denied that Mr. Garg and Sengar had denied misbehavior by workman against them. It is reiterated that enquiry was conducted allowing workman opportunity for his defence. Enquiry is conducted as per rules. It is denied that suggestions of Mr. Sengar was not considered. The charges alleged against workman were proved in Enquiry Proceedings. Notice was issued to workman. In appeal, the punishment imposed against workman was modified on humanitarian ground as workman had given undertaking not to repeat such incident. The special allowance of workman was stopped. The period of suspension was treated as period off duty. IIInd party reiterates that punishment is proper and legal.

4. As per order dated 3-4-01, enquiry was found proper and legal.

5. Considering pleadings on record and findings on preliminary issue, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Affirmative
(iii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

## REASONS

6. In view of finding in Issue No. 1 that enquiry is found legal, evidence on point adduced by parties needs no discussion. Whether charges alleged against workman are proved or not needs to be decided as per the evidence in Enquiry proceedings. Affidavit of evidence submitted by management's witness Deepak Kothari therefore needs no discussion. In his affidavit, he has narrated details of enquiry conducted against workman and order passed by Appellate Authority.

7. 2nd party management produced copy of settlements between management and the employees Union. Para No. 19.5 pertains to gross misconduct. Clause 19.5(c) pertains to drunkenness or riotous or disorderly or indecent behavior on the premises of the bank; (d) willful damage or attempt to cause damage to the property of the bank or any of its customers; (e) willful insubordination or disobedience or any lawful and reasonable order of the management or of a superior.

8. Enquiry officers held that for disorderly or indecent behavior, it is not necessary that the delinquent employ should be under intoxication. I do not find illegality in said observation.

9. Dealing with the question whether charges alleged against workman are proved or not, the evidence recorded by Enquiry officer shows that the incident was reported to police on 29-5-84. The incident had taken place between workman Ram Prasad and Anandilal Garg. Statement of Shri Prakash admitted his signature on MEX-1-statement given by him. He also admitted his signature on MEX-2, 3. The witness was cross-examined extensively. Management's witness has replied that he was present at the time of incident. That Shri R.P.Nag and Branch Manager Sengar were quarrelling loudly in Manager's cabin. The witness did not recollect names of all persons present at time of incident. He retraced that he had seen Mr. Sengar and workman. The witness was unable to tell number of persons present at the time of occurrence of incident. The witness was unable to tell exact time of incident. In reply to Q. at Page 45, witness says workman after going out of cabin had immediately returned back. He was unable to tell exact time. He further says that workman had gone to the place where Moolchand was sitting. He lifted scissor from the place and came to the place where Mr.Sengar was sitting. Workman had cut the papers in his hand and burnt those papers and left off the cabin of Manager. There were 3-4 papers in hand of workman. Astrey was on the table. Burning papers were brought by CSE Nagwanshi and thrown near the chair. There was no crowd at the door from which CSE Nagwanshi had come. Clothers or any other papers were not burnt with the burning papers thrown by Nagwanshi. When witness tried to put off burning papers, he was pulled by CSE. In his further cross-examination, management witness says while throwing burning papers, CSE

Nagwanshi said it was gift from him. The Godrej almirah having documents was in his cabin. Workman has threatened to see the witness when he tried to put off burning papers. When contradictory statements were brought to the notice of witness, he submitted that both statements were correct. The evidence of management's witness Shri V.N .Vyas says that he received knowledge about incident on telephone. As per report, CSE Nagwanshi posted in Ratlam branch had come to cabin and burnt papers. The report was submitted by Assistant General Manager. Branch Manager had pointed out the place of incident point out finger. The photograph was not snapped in his presence. He had inspected the allegations in his report drawing panchnama regarding statement of witnesses. Workman had participated in enquiry. The evidence of management witness No. 3 Shri Garg admitted his signatures on DX-2 on the point that zerox copy was not supplied by him to CSE Nagwanshi. Workman may have obtained it without his permission. Ist party workman at the time of argument submits that Enquiry Officer did not consider the evidence properly. These consistencies in evidence were ignored. Findings of Enquiry Officer are proper. The scope of judicial review in the matter of Enquiry Proceedings is limited. Rather Tribunal cannot re-appreciate the evidence as Appellate Authority. While dealing with the points whether charges alleged are proved from evidence in Enquiry Proceedings. If Tribunal finds that findings of Enquiry officer are not supported by any evidence, the Tribunal can exercise its jurisdiction. In present case, findings of Enquiry Officer are supported from evidence discussed above.

10. Management's Representative Shri Deepak Kothari relies on ratio held in

Case of M.R.Muley versus State Bank of Indore reported in 2011(1) MPLJ 385. Their Lordship considering appellant clerk cum godown keeper was chargesheeted for engaging three persons on daily wages without any power and authority, the factum of engaging said persons was accepted by the appellant by explaining the circumstances under which they were engaged prior permission to engage them not obtained by the appellant. Their Lordship held the explanation offered would not come within purview of denial of charges. Disciplinary Authority as well as the appellate authority did not commit any error in holding the charge to be proved against the appellant and thereby imposing penalty of withholding one annual increment without cumulative effect.

Ratio held in above case is on the point of disproportionate punishment and not w.r.t. adequacy of evidence. Ratio cannot be applied to present case at hand. As findings of Enquiry Officer are supported from evidence discussed above, I record my finding in Point No. 1 in Affirmative.

11. Point No.2- in view of my finding in Point No.1, charges are proved against workman, Ist party workman about

burning papers in cabin of Branch Manager, certainly it amounts to a disorderly act. On the point of proportionate of punishment, management representative Shri Deepak Kothari relies on ratio held in.

Case of Mahindra and Mahindra Ltd. *versus* N.B.Narawade reported in 2005(3) SCC 134. Their Lordship of Apex Court dealing with scope of section 11-A . When the discretionary power to be used held discretion is certainly not unlimited and can only be exercised 1 the following cases (1) punishment being so disproportionate to gravity of misconduct so as to disturb conscience of court or existence of any mitigating circumstances which require reduction of the sentence or past conduct of workman.

Ist party workman has not adduced any evidence about utility circumstances or his past conduct justifying reduction of punishment.

12. Considering the proved misconduct, Ist party workman had burnt papers in cabin of Branch Manager, the punishment imposed by Appellate Authority withholding increment without cumulative effect stopping special allowance cannot be said excessive. Therefore no interference would be justified. For above reasons, I record my finding in Point No. 2 in Affirmative.

13. In the result, award is passed as under:—

(1) The action of the management of State Bank of Indore in not treating the periods from 31-5-84 to 6-5-85 and from 3-3-86 to 3- 3-87 as duty withholding one increment with cumulative effect and withdrawal of special allowances for five years in respect of Shri R. P. Nagwanshi, cashier is legal and proper.

(2) Workman is not entitled to any relief.

14. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R.B. PATLE, Presiding Officer

नई दिल्ली, 5 मई, 2015

**का.आ. 941.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंडोर मर्ज़ड विद इन भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण, जबलपुर के पंचाट संदर्भ संख्या (187/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/05/2015 प्राप्त हुआ था।

[सं. एल-12012/337/97-आई आर (बी-1)]

सुमिति सकलानी, अनुभाग अधिकारी

New Delhi, the 5th May, 2015

**S.O. 941.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 187/98) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of Indore Merged with State Bank of India and their workmen, received by the Central Government on 05/05/2015.

[No. L-12012/337/97-IR (B-1)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/187/98

General Secretary,  
Daily Wages Bank Employees Association,  
Hardev Niwas,  
9, Sanwer Road, Ujjain.

...Workman/Union

#### Versus

Managing Director,  
State Bank of Indore, Head Office,  
5, Yeshwant Niwas Road, Indore,  
(Merged with State Bank of India)

...Management

#### AWARD

Passed on this 17th day of April, 2015

1. As per letter dated 10-8-98 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/337/97-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of State Bank of Indore in terminating the services of Shri Rajkumar Samarwal *w.e.f.* 4-1-97 is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party General Secretary, Daily Wages Bank employees Association submitted statement of claim on behalf of workman. Case of Ist party is that workman was engaged on daily wages from 17-5-88 on vacant post of peon. Workman was doing clearing sweeping, dusting etc. work from 17-5-88 from 8 to 10 A.M. Thereafter he was working

in the branch as peon from 10.30 to 6 P.M. That after transfer of Branch Manager Shri Jahsiwala, workman was working under Branch Manager Shri Khandelwal, Pote, Vijayvargeey, Kashmire and others. When workman claimed full salary and bonus, he was terminated from 4-1-97. Workman further submits that Ishwar Prasad and Laxmi Narayan are still working. Their wages are paid by drawing bogus bills. Workman submits that he completed 240 days service. He acquired status of regular employee under section 25-F of ID Act. The services of Ist party workman were terminated without notice, retrenchment compensation was not paid. The termination of his service is in violation of Section 25-F and Para 507, 524 of Sastry Award. It is further submitted that IInd party do not follow principles of last come first go. As such termination of workman is in violation of section 25-G of I.D. Act. Workman was not given opportunity to work after his termination of service. IInd party has thereby violated Section 25-H of I.D. Act. On such ground, workman is praying for reinstatement with back wages.

3. IInd party has filed Written Statement at page 12/1 to 12/11. IInd party filed Written Statement at Page 12/1 to 12/11. IInd party raised preliminary objection that workman was not appointed by IInd party and not completed 240 days service, therefore reference is not tenable. That Shri Ram Nagwanshi so called General Secretary of the Union was dismissed from Bank service. He is not competent to represent workman. IInd party Bank is incorporated under SBI Act 1959 for appointment of staff, sub staff. As per policy of the Bank, sub staff is appointed after following recruitment process, names sponsored through Employment Exchange, candidates are selected after interview. Workman was not appointed following such selection process. It is submitted that services of workman were utilized as per exigencies for few hours. Workman was paid agreed wages. The disengagement of workman is covered under Section 2(oo)(bb) of ID Act. Workman was not terminated by IInd party. It is further submitted that Ist party is not covered as workman under ID Act. There is not employer employee relationship between parties. The daily wage employees are not entitled for reinstatement. IInd party has referred to ratio held in various cases and submits that workman is not entitled to reliefs claimed by him.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of State Bank of Indore in terminating the services of Shri Rajkumar Samarwal w.e.f. 4-1-97 is justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final orders.

## REASONS

5. Workman is challenging termination of his services from 4-1-97 for violation of Section 25-F, G, H of ID Act. IInd party denied employer employee relationship. It is contented that workman was not appointed by IInd party. Workman as not completed 240 days service. Provisions of ID Act are not applicable.

6. Workman filed affidavit of his evidence in support of his contentions in statement of claim. Workman has stated that he was engaged on daily wages in Sujalpur Mandi branch by Branch Manager Khandelwal in March 1989. He was working from 8 to 10 AM for cleaning te branch and from 10.30 to 7 PM, he was performing duties of peon. He was working more than 8 hours. He was paid Rs. 20/- per day. He worked under different Branch Managers. His services were terminated from 6-1-97 after demand for bonus and regular pay. He was not served with notice, retrenchment compensation was not paid to him. In his cross-examination, workman says he was working in Sujalpur Branch doing cleaning, sweeping work. He was working in this branch from 1980 to 1997. He denies that intermittent breaks were given to him. Shri Vishnu Prasad and Laxmi Narayan were working in the same branch. He was unable to tell exact period of their working. Workman denies that he was engaged when regular employee was used to be on leave.

7. Management's witness Shri Sanjeev Verma filed affidavit of his evidence supporting contentions of management that workman was engaged as per exigencies and that workman was not continuously working from 1980 to 4-1-97. That Ist party workman was doing graduation during 90 to 93. Management's witness in his cross-examination says permission of Controlling Authority was not taken before engaging the workman. Sastry Award, Desai Award are applicable to the services of the workman. Workman was not given appointment letter. His attendance was not maintained in the register. Management's witness claim ignorance how wages were paid to the workman management's witness denies payment of bonus to workman.

8. The evidence of workman is supported by documents Exhibit W-4. Workman was paid bonus of Rs. 3393/- Exhibit W-5 is settlement for payment of bonus to workman and others. Exhibit W-6 shows working days of workman 119 days in 1990, 91 days in 1997, 184 days in 1991, 250 days in 1995, 221 days in 1996. Exhibit W-6 shows payment of bonus of Rs. 3393/- to workman. Exhibit W-8 is zerox copy of the cheque of payment of bonus to workman. From above document, it is clear that workman worked more than 240 days in 1995 & 1996. Workman was not served with notice, retrenchment compensation was not paid to him. Management's witness claims ignorance on the point therefore it is proved that the termination of

service of workman is in violation of Section 25-F of ID Act. Therefore I record my finding in Point No. 1 in Negative.

9. Point No. 2—during course of argument, Shri R. Nagwanshi Union Representative after pointing out evidence submits that termination of workman is illegal, workman was working during 88 to 97, he is entitled for regularization. However the terms of reference does not relate to regularization. Settlement dated 13-7-97 produced at Exhibit W-2 provides—

"A one time opportunity for absorption on permanent basis in subordinate care as peon cum farrash will be given to temporary employees who have put in more than 240 days of service in a period of twelve consecutive months provided they satisfy the eligibility criteria laid down under the Banks rules such as minimum educational qualifications, age etc."

As terms of reference do not include denial of regularization, workman cannot be allowed such benefit beyond the terms of reference. Workman was working with IIInd party from 1990 to 1996. As per document Exhibit W-6, he was paid bonus, his services are terminated without notice. Workman was not appointed following selection process. Compensation Rs. One Lakh would be appropriate. Accordingly I record my finding in Point No. 2.

10. In the result, award is passed as under:—

- (1) The action of the management of State Bank of Indore in terminating the services of Shri Rajkumar Samarwal *w.e.f.* 4-1-97 is not proper and legal.
- (2) IIInd party is directed to pay compensation Rs. One Lakh to the workman within 30 days from the date of publication of award.

In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

11. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R.B. PATLE, Presiding Officer

नई दिल्ली, 5 मई, 2015

**का.आ. 942.—**ओद्योगिक विवाद अधिनियम, 1947, (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंडोर मर्ज़ड एज भारतीय स्टेट बैंक प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण जबलपुर के पंचाट संदर्भ संख्या (70/04) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/05/2015 प्राप्त हुआ था।

[सं. एल-12012/23/2004-आईआर (बी-1)]

सुमिति सकलानी, अनुभाग अधिकारी

New Delhi, the 5th May, 2015

**S.O. 942.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 70/04) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of Indore Merged as State Bank of India and their workmen, received by the Central Government on 05/05/2015.

[No. L-12012/23/2004-IR(B-1)]

SUMATI SAKLANI, Section Officer

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

#### No. CGIT/LC/R/70/04

General Secretary,  
Daily Wages Bank Employees Association,  
9, Sanwer Road, Ujjain.

...Workman/Union

#### Versus

General Manager (Operations)  
State Bank of Indore,  
Merged as State Bank of India  
Local Head Office,  
Hoshangabad Road,  
Bhopal

...Management

#### AWARD

Passed on this 17th day of April 2015

1. As per letter dated 21-6-04 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/23/2004-IR(B-I). The dispute under reference relates to:—

"Whether the action of the management of General Manager (O), State Bank of Indore, Indore in not granted appointment on compassionate ground in r/o Smt. Varsha Tiwari is justified? If not, to what relief she is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 12/1 to 12/3. Ist party workman submitted

that her husband B.K. Tiwari was murdered on 12-9-99 leaving Ist party workman is widow, son Adarsh and daughters Adarshika and Darshika, mother shantidevi. Deadbody of Shri B.K. Tiwari was found near Simron road. That workman, her brother and husband of her sister were prosecuted for offence under Section 302 IPC in Case No. 405/99. IIInd party had issued circular dated 19-10-91 providing employment on compassionate ground. That workman alongwith 3 children had visited regional office of the Bank at Indore requesting compassionate employment. She was told by officers that criminal case was pending. After its decision, she will be allowed compassionate appointment after decision of criminal case. That as per judgment dated 1-11-00, workman was acquitted *vide* letter dated 26-4-01. Assistant General Manager informed her that her claim for compassionate employment could not be considered as such claim was to be submitted within one year of the death of the employee.

3. Ist party workman further submitted that her claim for compassionate employment was not considered in 1999 to 1-11-00 on the ground that criminal case was pending. After dispute was raised before conciliation officer, amount of Rs. 20,521.41 was paid towards gratuity. On such ground, workman is praying for compassionate employment.

4. IIInd party filed Written Statement at Page 13/1 to 13/9 opposing claim of workman preliminary objection is raised by IIInd party that Shri Ram Nagwanshi Union representative was a dismissed employee of the Bank, as such he is not competent to represent the case. That Shri B.K. Tiwari H/o workman was employee of the Bank posted as Arm Guard in Zonal Office, Indore. His dead body was found on 13-9-99. The police had prosecuted workman and dinesh Kohli for his murder. After completion of trial, additional session Judge acquitted workman and Dinesh Kohli on 1-11-00. Under claim for appointment on compassionate ground, request should be received by Bank earlier before completion of one year from death of the employee. Ist party workman applied for employment on compassionate ground after 20 month of death of her husband. Her application was submitted after period of one year. Therefore workman is not entitled for compassionate employment. Workman was negligent. All adverse contentions of workman have been denied. Bank had not given any assurance to workman for giving employment on compassionate ground after acquittal in criminal case.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- (i) Whether the action of the management of General

Manager (O), State Bank of Indore, Indore in not granting appointment on compassionate ground in r/o Smt. Varsha Tiwari is justified

In Affirmative

- (ii) if not, what relief the workman is not entitled workman is entitled to?" to any relief.

## REASONS

6. Workman is claiming employment on compassionate ground after death of her husband. As per Exhibit W-1, General Manager of the Bank had directed that application for compassionate ground should be submitted alongwith relevant documents with check list. Document Exhibit W-2 is letter dated 26-4-01 informing workman that her application for compassionate appointment could not be considered as application was not submitted in prescribed time. Exhibit W-3 is copy of application submitted by Union Representative to ALC. Copy of judgment of criminal case in session Case 405/99 is produced at P-6. Workman and Dinesh were acquitted on 1-11-00. Copy of rules in the matter of appointment on compassionate ground are produced. 1st party has admitted said documents.

Para-5 at Page 295 provides-Request for appointment under the scheme should be received by the Bank within one year from the date of death of the employee. In case the defendant is a minor or does not possess suitable minimum qualification his/her case can be considered within four years of the death of the employee to enable him/her to so qualify in terms of age or qualification.

Clause IV(b) relates to appointment in subordinate cadre. A dependent who can prove to the satisfaction of the Appointing Authority that he possesses a simple knowledge of reading and writing English or any other regional language may be eligible for appointment and requirement of his having passed any examination in school may not be insisted upon.

7. Workman filed affidavit of her evidence. However she failed to appear for cross-examination. Her evidence was closed on 6-5-2014.

8. Management's witness Shri Deepak Kothari filed affidavit of his evidence supporting contentions in Written Statement of IIInd Party that application for compassionate appointment was submitted after 20 months of death of her husband. Workman was not entitled for employment on compassionate ground. In his cross-examination, management's witness was unable to tell the date of death of her husband of workman. He was also unable to tell workman had gone to the office claiming employment on compassionate ground. At that time, she

was told criminal case was pending. Workman was acquitted. He claims ignorance whether she has filed appeal against order. As workman failed to appear for her cross-examination, her evidence cannot be considered. There is no evidence that workman had visited regional office claiming employment on compassionate ground.

9. The application was not submitted within one year of death of the husband of workman as provided in Para-5 discussed above. Therefore I record my finding in Point No. 1 in Affirmative.

10. In the result, award is passed as under:—

- (1) The action of the management of General Manager (O), State Bank of Indore, Indore in not granting appointment on compassionate ground in r/o Smt. Varsha Tiwari is proper and legal.
- (2) Workman is not entitled to any relief.

11. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 06 मई, 2015

**का.आ. 943.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार युको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (52/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.05.2015 को प्राप्त हुआ था।

[सं. एल- 12012/46/2010-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, 6th May, 2015

**S.O. 943.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 52/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen, received by the Central Government on 05/05/2015.

[No. L-12012/46/2010-IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/52/2010

Shri Nathulal,  
S/o Shri Mangilal,  
H. No. 70, R/o Gwal Toli  
Distt. Neemuch (MP)

...Workman

#### Versus

Dy. General Manager,  
UCO Bank, Regional office,  
380, Saket Nagar,  
IInd Floor, Indore

...Management

#### AWARD

Passed on this 13th day of March 2015

1. As per letter dated 26-11-2010 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No.L-12012/46/2010-IR (B-II). The dispute under reference relates to:

"Whether the action of the management of Assistant General Manager, UCO Bank, Indore in dismissing the services of Late Nathulal *w.e.f.* 26-11-99 was justified? What relief the workman's family is entitled for?"

2. The dispute is referred as per order dated 26-11-10. The dispute is of dismissal of workman Late Nathulal. Management appeared through Advocate Bhattacharjee. Initially dispute relating to dismissal of services of workman deceased is not proper or legal. Dispute between management and deceased workman cannot be decided as the workman is not alive. Management was directed to furnish particulars of family members of deceased workman. The details are not furnished. It is surprised to say the dispute under reference is incomplete with respect to the parties.

3. In the result, dispute cannot be adjudicated. Accordingly reference is disposed off.

4. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R.B. PATLE, Presiding Officer

नई दिल्ली, 6 मई, 2015

**का.आ. 944.—**ओद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एण्ड सिंध बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 15/06) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.05.2015 को प्राप्त हुआ था।

[सं. एल- 12011/182/2005-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 6th May, 2015

**S.O. 944.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/06) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Punjab & Sindh Bank and their workmen, received by the Central Government on 05/05/2015.

[No. L-12011/182/2005-IR(B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/15/06

Gneral Secretary,  
Prathadith Karmachair Kalyan Manch,  
9, Sanwar Road,  
Ujjain (MP)

...Workman/Union

#### Versus

Zonal Manager,  
Punjab & Sindh Bank,  
Zonal Office, E-3/114,  
Arera Colony,  
Bhopal (MP)

...Management

#### AWARD

Passed on this 24th day of March, 2015

1. As per letter dated 28-4-2006 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12011/182/2005-IR (B-II). The dispute under reference relates to:

"Whether the action of the Zonal Manager, Punjab & Sindh Bank, Zonal Office, Bhopal to deny permanent appointment to Shri Rajkishore Sharma is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Statement of claim is submitted by workman at page 2/2 to 2/5. Case of workman is that he was engaged on vacant post of peon from 30-8-81 in Jayendragani Bank of Pubjab & Sind Bank at Gwalior. He was working with devotion. He was doing work of cooking meals, cleaning utensils, taking care of his children. He was also working

as watchman at residence to Branch Manager Shri Surjit Singh Kindra. He continuously worked from 30-8-81 to 19-12-86 at place of work of Shri Surjit Singh at Gwalior, Amritsar. That he worked on 365 days in an year at residence of Surjit Singh Kindra. Interview call was also issued to him after application Submitted by him. He was interviewed. His name was at Sl. No. 5 of Select list. After transfer of Shri Surjit Singh to Amritsar, Ist party workman was working at Amritsar on 30-12-00. Workman submitted application for his appointment as regular employee. Ist party workman further submits he raised Industrial Dispute. He was persuaded to withdraw dispute raised by him assuring him to appoint against permanent post. He further submits that thereafter he was engaged on daily wages. Some writing was obtained from him on stamp papers. After he was again discontinued from work, he had raised dispute before ALC. During pendency of conciliation proceedings, management had correspondence with Union Representative Ram Nagwanshi. After failure report submitted by ALC, the dispute has been referred, Workman submits that he was denied appointment for permanent post is illegal. Workman prays that action of the management denying him appointment on permanent post is illegal.

3. IIInd party management filed Written Statment at Page 9/1 to 9/8. Preliminary objection is raised by IIInd party that after voluntary withdrawal of earlier dispute, the reference is not tenable. Workman has not acquired right for appointment against permanent post. The referene deserves to be rejected. The claim of workman for appointment against permanent post is not legal. Workman had not completed 240 days continuous service during any of the calender year. Merely completing 240 days service doesnot give him right for appointment on permanent post. All material contentions of workman continuously working in the Bank is denied. It is rather contented that workman was working as domestic servant to Branch Manager Surjeit singh. He was performing duties in the branch has been denied. The documents relied by workman doesnot give him right for appointment against permanent post. Workman voluntarily withdrawn his claim assuming that his name was at Sl. No. 5 of select list. The document submitted by workman is not select list rather it is information submitted *w.r.t* the employees working in the Bank. On such contentions, IIInd party party prays for rejection of claim of workman.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- (i) Whether the action of the In Affirmative  
Zonal manager, Punjab &  
Sindh Bank, Zonal Office,  
Bhopal to deny permanent  
appointment to

Shri Rajkishore Sharma is Justified?

(ii) If not, what relief the workman is entitled to?" to any relief.

### REASONS

5. Workman has raised dispute. The terms of reference pertains to denial of permanent appointment to workman Raj Kumar Sharma by management of IIInd party. The IIInd Party had denied claim of workman on various grounds contending that he never completed 240 days continuous service in the Bank. Workman does not get right for appointment against permanents post. Workman did not participate in reference proceeding, no evidence is adduced. Evidence of workman is closed on 20-4-2011. However documents produced by workman are admitted by IIInd party. Exhibit W-1 is order of reference. W-2 is copy of letter dated 1-5-99 submitted by Branch Manager to Dy. General Manager in the matter of temporary peons. The Contents of said letter are with reference of your letter on captioned subject were given below the names of temporary peon who completed 240 days and above in 12 preceding consecutive months and list of all remainig persons including those who have completed 90 days and above. Name of workman is appearing at Sl. No. 5 letter is not clear whethr workman completed 240 days service or he completed more than 90 working days. The names of 25 employees are shown in the letter. Exhibit W-3 is application submitted by workman withdrawing conciliation proceeding before ALC bearing No. ALC/7/28-2001. Exhibit W-4 is order treating dispute as withdrawn and conciliation proceedings was closed. Exhibit W-5 is letter given by Sr. Manager to Zonal Manager of Punjab and Sind Bank dated 1-1-2001. Letter find reference of representation through Jaibhan Singh, member of parliament stating that the workman had worked as temporary peon in branch office, Jayendragar Exhibit W-6 shows working days of workman, 31 days in August of September 1981, 30 days from 2-11-81 to 3-12-81, 31 days from 12-12-81 to 23-1-81, 31 days from 1-3-82 to 31-3-82, 30 days from 4-4-82 to 4-5-82, 30 days from 12-7-82 to 10-8-82, 31 days from 24-8-82 to 24-9-82. Exhibit W-7 is letter issued by RLC, Bhopal to Zonal Manager of Punjab and Sind Bank dated 22-2-05 to remain present with record. workman has not adduced evidence. IIInd party has not admitted workman had completed 240 days continuous service.

6. Management filed affidavit of evidence of Shri Rajeev Kumar Dubey stating that workman was never appointed as peon in the Bank against vacant post. That 1st party workman had worked in the Bank as and when his services were required. He was paid remuneration. Workman not worked continuously for 240 days from 12 calender months prior to the reference. The Bank Office never assured workman to give permanent appointment.

7. Management's witness in his cross says that he was not posted in branches where workman was working. He has not discussed about claim of workman with his predecessors. Only he seen the documnets. Before engaging workman, post was not advertised, any selection process was not followed. Exhibit W-8 admitted by management's witness was interview call given to the workman. That he doesnot konw about conciliation proceeding initiated by workan before ALC, Bhopal for regularization. When workman has not participated in reference, he has not adduced any evidence about the working days. Claim of workan is not substantiated by any kind of evidence. Union Representative Shri Ram Nagwanshi produced copies of awards passed in R/180/00, R/4/07, R/105/07, R/27/04. I have carefully gone through those awards. When workman has not adduced any evidence about completed 240 days continuous service and period of his working or termination of his service, the copies of awards cannot be relief for persouasion purpose.

8. Learned conseil for IIInd party Shri Jaiswal submits that Ist party workman is not in employment. He was discharged. Workman is not entitled for regularization. Thopugh my attention was pointed out to document P-3/8, I do not find such documents on record, to be priceise in absence of evidence on part of workman, claim of workman for regularization cannot be upheld. Therefore I record my finding in Point No. 1 in Affirmative.

9. In the result, award is passed as under:—

(1) The action of the Zonal Manager, Punjab & Sindh Bank, Zonal Office, Bhopal to deny permanent appointment to Shri Rajkishore Sharma is proper and legal.

(2) Workman is not entitled to any relief.

10. Let the copies of the award be sent to the Government to India, Ministry of Labour & Employment as per rules.

R.B. PATLE, Presiding Officer

नई दिल्ली, 6 मई, 2015

**का.आ. 945.—ऑद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार युको बैंक के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिकी अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 48/05) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.05.2015 को प्राप्त हुआ था।**

[सं. एल-12012/12/2005-आईआर (बी- II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 6th May, 2015

**S.O. 945.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 48/05) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen, received by the Central Government on 05/05/2015.

[No.-L-12012/12/2005-IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/48/05

Shri Parasmal Jain,  
S/o Shri Nemichand Jain,  
R/o 437, Gumasta Nagar,  
Indore

...Workman

#### Versus

Regional Manager,  
UCO Bank,  
Regional Office, 380  
Saket Nagar,  
Opp K.D. Hospital,  
Indore.

...Management

#### AWARD

Passed on this 23rd day March, 2015

1. As per letter dated 26-5-05 by the Government of India, Ministry of Labour New Delhi the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-12012/12/2005-IR (B-II). The dispute under reference relates to:

"Whether the action of the management of Regional Manager UCO Bank Indore in dismissing the services of workman Shri Parasmal Jain S/o Shri Nemichand Jain w.e.f. 31-8-99 is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist Party workman submitted statement of claim at Page 3/1 to 3/18. Case of workman is that he was serving with 2nd party Bank at Indore as clerk from 9-11-1982 till 4-5-199. Workman was dismissed on 31-8-99 without conducting fair and proper enquiry. The facts which led to dismissal from services are narrated in details. That Mrs. Rajkumar Valecha, Sunil Valecha had given instructions. Manager cheque of Rs. 41,350/- was prepared

by Shri Ravindra Jain, clerk. Manager's cheque was signed by Non-applicant No. 3 and two other officers of Bank. Payment of said cheque was made according to the rules of Bank after completing formalities in joint name of Shri Mahendra Ajmera, Smt. Kiran Ajmera and Shri Parasmal Jain by Transfer entry. A certificate of having given instruction for payment of money is supported by affidavit. That account holders have no complaint about payments made as per instructions of Shri Rajkumar Valecha and Sunil Valecha. That payment was made directly as per norms of the Banks and duly authorized officers of the Bank. No harm was caused to the Bank. Disciplinary Authority of the Bank had issued chargesheet on 13-4-88 departmental enquiry was conducted on different dates. Enquiry Officer submitted his report on 20-7-99. Disciplinary Authority imposed punishment of dismissal on 31-8-99.

3. Workman has reiterated that enquiry was not properly conducted. That Shri Sunil Valecha was produced at DE-1 before Enquiry officer. Said witness had produced certificate DE-4 showing payment was made as per their instructions. Enquiry officer not considered those documents while submitting his report to the Disciplinary Authority. Examination-in-chief of DW-1 Sunil Valecha was complied while he was cross examined. Due to sudden demise of his grandfather, the defence witness could not be cross-examined. Workman further submits managers cheque were not produced despite of his request. The documents ME-1 to ME-31 are not concerned with the workman. The workman is not concerned with writing those documents. The author of those documents were different. Management's witness Shri Ram Keshwar has not deposed anything about tampering of documents. His evidence is silent about the fraud committed by workman. The documents in question were written by Shri T.D. Modak, R.C. Khandelwal, Prakash Maheshwari, Jyoti Bithare, Apurva, Mahesh Lala, Dilip, Apurva Choudhary, Udai Ram, Ravindra Jain, J.B. Kumar. Cheque of Rs. 41,350/- was prepared by Ravindra Jain. After preparation of Manager, cheque, the entry in FDR in transfer scroll were made by Shri Ravindra Jain, P. Jain. It is reiterated that workman had not taken any of the entries. Documents were not examined by handwriting expert. The report of handwriting expert was not produced in enquiry. The findings of Enquiry Officer are perverse. The punishment of dismissal on report of Enquiry Officer is illegal. On such grounds, workman is praying to set aside order of his dismissal and reinstatement with back wages.

4. Management filed Written Statement at Page 11/1 to 11/9 opposing claim of workman. All material contentions of workman that enquiry was not properly conducted, documents were not supplied to him. The order of dismissal is passed illegally are denied. Documents produced by workman is addressed to general public and not Branch Manager, it has no value. The velocity of documents was

not examined by cross-examination. Management admits that DW-1 was charged in enquiry. He made deposition in examination in chief and left enquiry. He avoided cross-examination. The documents produced by management ME-1 to ME-31. Its genuiness was verified after inspection by workman. It is denied that enquiry conducted against workman is illegal. Principles of natural justice were not violated. On merit, it is submitted that amount of FDI was transferred in joint accounts of workman and other account holders. Workman withdrawn amount from it. There is sufficient evidence to prove charge against workman. The findings of Enquiry officer are not perverse. Considering serious nature of proved charges, punishment of dismissal imposed against workman is proper and legal.

5. Workman submitted rejoinder at Page 12/1 to 12/8 reiterating his contentions in statement of claim.

6. As per order dated 12-10-12, enquiry against workman is found legal and valid. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

<ul style="list-style-type: none"> <li>(i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?</li> </ul>	In Affirmative
<ul style="list-style-type: none"> <li>(ii) Whether the punishment of dismissal imposed against workman is proper and legal?</li> </ul>	In Affirmative.
<ul style="list-style-type: none"> <li>(ii) If not, what relief the workman is entitled to?"</li> </ul>	Workman is not entitled to any relief.

### REASONS

7. As stated above, enquiry conducted against workman is found legal, valid as per order dated 12-10-12 filed by my predecessor. The question remains for consideration is whether charges alleged against workman are proved from evidence in Enquiry Proceedings, whether the punishment of dismissal is proper and legal. 1st point is whether the charges alleged against workman are proved against workman needs to be decided considering the evidence in Enquiry proceedings. Learned counsel for workman Shri Tripathi during course of argument submits that chargesheet was issued to workman on 13-4-98 abusing misconduct of fraud committed by workman. That sole witness Shri Ram Keshwani was examined in Enquiry proceedings. His evidence is silent about tearing or ultering any documents. Chargesheet Exhibit W-3 pertains to fixed deposit of Rs. 25,000. That model standing order Clause 19.5(d)(j) does not cover the alleged misconduct. Joint account was opened. Amount of Fixed deposit was paid Rs. 41,350/- and 15,000/- in name of Kiran Ajmera, Mahendra Ajmera, Parasmal. There is no evidence to

support tampering of record or acts causing harm to Bank. There is no charge pertaining to monetary loss caused to the Bank in statement of claim of management's witness Ram Keshwani. It is further submitted that in findings of Enquiry Officer charges of tampering record are not supported. Learned counsel for 2nd party Shri Bhattacharjee pointed out my attention to document ME-1 to ME-31 produced in Enquiry proceedings. DE was held valid. The charge was under clause 19.5.(d)(j) of standing orders. Learning counsel pointed out that the amount of FDR was spilled and payment was made Rs. 41,350/-, 15,000/- fraudulently deposited in SBI Account. The amount was withdrawn. The documents ME-14 to 23 were not disputed by CSE. Learned counsel submits that charges against workman are proved. Learned counsel for workman Shri Tripathi relies on several citations in support of arguments.

In case of Rasik Lal *versus* Ahmedabad Municipal Corporation reported in AIR 1985-SC 504. Their Lordship dealing with question that dismissal of petitioner employee on grounds of misconduct petitioner shown to be guilty of suppression of material fact which would weight with any employer in giving him employment. Their Lordship held case consideration under article 136.

The facts of present case are not comparable as charges do not pertain to suppression of material information for employment of the workman. Therefore ratio cannot be applied to case at hand.

In case of Ministry of Finance and another *versus* S.B. Ramesh reported in 1998(3)SCC 227, their Lordship dealing with departmental enquiry and standard of proof Govt. servant charged of living together and having extra marital sexual relationship with a lady. The CAT setting aside the punishment of compulsory retirement on account of want of evidence to substantiate the charge after finding that Enquiry officer had not attempted to question the delinquent employee under Rule 14(18) of CCS CCA Rules on the evidence appearing against him although such opportunity ought to have been afforded despite having set him ex parte.

The facts of present case are not comparable. Charges against workman are different and enquiry conducted against workman is found legal and valid. Ratio held in the case cannot be applied to present case at hand.

Reliance is also placed by counsel for workman Shri Tripathi on ratio held in

Case of Roop Singh Negi *versus* Punjab National Bank reported in 2009(2)SCC-570. In para-23 of the judgment their Lordship dealing with admission of charged employee held if admission made by charged employee before police was taken into consideration his subsequent acquittal by criminal court could not be ignored.

The facts of present case are different. Case against workman is not based on admission or confession but enquiry was found legal and valid and evidence in enquiry proceedings needs to be considered. Therefore ratio held in above case cannot be applied to case at hand.

In case of Union of India and others *versus* Gyan Chand Chattar reported in 2009(12) SCC 78 their Lordship dealing with judicial review in departmental enquiry. The department found workman guilty of several charges including charges of demanding bribes.

In present case, evidence in enquiry Proceedings needs to be considered as Ist party workman was not prosecuted in criminal, there is no question of considering such points. Ratio cannot be applied to case at hand. So far as relief upholding 50% pay and allowance etc. are matter of consideration if charges against workman are not proved from evidence in Enquiry.

8. Learned counsel for management Shri Bhattacharjee produced copy of award passed in R/98/05 by CGIT Nagpur. It is surprised to say that the judgment of CGIT are not binding on this Tribunal.

Ratio held in case of State of Tamil Nadu *versus* Thiru K.V. Perumal and others reported in 1996 SCC(L&S) 1280. That duties of the authorities is only to supply relevant documents and not each and every document asked by delinquent. In view of enquiry conducted against workman is found legal and received finality, ratio cannot be applied to present case at hand.

In case of State Bank of India and another *versus* Bela Bagchi and others reported in 2005(SCC) L & S 940. Their Lordship held absence of any loss to the Bank is no defence. Bank employee has to exercise a higher degree of honesty and integrity. Money received by the employee from account holder for depositing it in his saving bank account not so deposited and a fraudulent or fictitious credit entry made in pass book of account holder. Contention that the account holder had withdrawn his grievances and no loss was caused to the Bank held would not condone the misconduct. Charges against employee were not casual but serious in nature.

In case of Suresh pathrella *versus* Oriental Bank of Commerce reported in 2007(1) SCC (L&S) 224. Their Lordship considering the misconduct and propriety Bank Officer misappropriation of customers money by without causing loss to the Bank held nonetheless a misconduct not warranting a lenient view.

#### 9. Counsel for workman Shri Tripathi relief in

Case of Union of India and other *versus*. J. Ahmed reported in 1979(2)SCC286 their Lordship dealing with what is explained deficiencies in personal character or personal ability donot constitute misconduct for taking disciplinary proceedings. Negligence in performance of duty are not acts of commission or omission.

In case of State of UP and other *versus* Ramesh Chandra Mangalik report in 2002(3) SCC 443 their Lordship concluded it also however been observed that negligence in duty may amount to misconduct in certain cases where consequences may be directly attributed to the negligence of the delinquent resulting in heavy losses.

10. Keeping above legal position in view, the evidence of management's witness needs to be considered. Exhibit W-3 is chargesheet issued to workman. 8 charges are alleged against workman. Charges pertains to transaction of FDR of Rs. 25,000 deposited on 14-3-88. FDR No. 808472 issued for the amount was kept as security for a cash credit limit of Rs. 50,000 sanctioned in favour of M/s. Sunil and Company. 2nd charge pertains to transfer of overdue FDR on 26-9-90 and renewal of FDR on 28-1-91. The renewal FDR bearing No. 727618 dated 20-1-91 was subsequently transferred to overdue FDR Head on 30-9-93 proceeds being Rs. 42,236/- On 31-5-96, overdue FDR was renewed for 48 months. 11% interest to mature on 14-3-97. FDR was foreclosed on 17-7-96 paying Rs. 14,114 as interest on it and thus total amount of payment being Rs. 56,3350/-. Payment was made by splitting amount of Rs. 41,350 and Rs. 15000 for issuance of Managers cheque and an FDR respectively in name of Rajmumari valecha and Sunil Valecha. As per charge No. 4 on 20-7-96 CSE Parasmal Jain in most fraudulent manner prepared Managers cheque of Rs. 41,350 was prepared in joint name of Mrs. Kiran Ajmera, Mahendra Ajmera and Parasmal Jain (CSE). Charge No. 5 pertains to withdrawal of Rs. 18,600 by cash and transfer of sum of Rs. 12000 to FDR Loan account No. 2872 by withdrawing the same from your account No. 6547/37. Withdrawal of Rs. 10,800 by CSE on 22-7-96 utilising sum of Rs. 2525/- from above said SB Account. The CSE denied charges against him as per Exhibit W-4. There was no dispute that management produced documents ME-1 to ME-31 were inspected by CSE. The CSE confirmed verification of documents at Page 36 of Exhibit W-4. Sole management's witness Ram Keshwani working as Asstt. Manager in his evidence has narrated the details of the documents produced before Enquiry officer. At Page 5/22 of Enquiry Proceedings, witness of management says it is evident that ME-14 Unit 12 that FDR Rs. 42,236 was included by Rs. 14,113 as interest and amount paid Rs. 42,236 FDR supplementary ME-12. Management witness at Page 5/21 of Enquiry proceedings says FDR No. 808472 Rs. 30,460 further renewed on 23-1-91. FDR Register confirmation to ME-7 was also removed/tampered with by CSE. The CSE in attempt to removal/transfer with branch records also renewed DD register folio in confirmation to ME-8 having the entry of BD FDR Rs. 42,236. On 31-5-96, as evident the FDR was renewed by DD FDR Rs. 46,236/-. At page 5/23, management's witness says ME-25 FDR No. 880133 Rs. 15000 was in writing of Shri Parasmal Jain. Writing of Rs. 44 as per debit

voucher was in hand writing of Shri Jain. FDR Rs. 25000 was received. Shri Sunil Valecha and Rajkumari Valecha is evident that while ME-29 it was kept as security. At page 5/26 of Enquiry Proceedings, there is clear reference about DRF of Rs. 15000 was issued and Manager Cheque of Rs. 41,350 was issued in favour of beneficiary Sunil Valecha and Rajkumari Valecha. On 17-7-96 above transaction was made by transferring entries which were recorded in transfer scroll. The CSE tampered with the records of the transfer scroll dated 17-7-96 which is evident from ME-10 which is non transfer scroll cheque, the entries made on 16-7-96, 18-7-96, 19-7-96. They are having no record of 17-7-96. Same was made with malafide intention removing the concerned vouchers by CSE. At same page of Enquiry Proceedings, he observed with subject of tampering was made by CSE on 20-7-96. CSE most fraudulently managed credit. ME-22 Rs. 41,350 which is further evident from ME-16 dated 20-7-96. At page 5/27, it finds reference that credit of Rs. 41,350 by transfer entry to Saving Account 6547/37 SB Account of CSE as per ME-24. Evidence in Enquiry Proceedings clearly shows that payment of Rs. 41,350/- was transferred to SB Account 6547/37. The account was jointly held by workman along with others. Workman had withdrawn amount of Rs. 12000, 3000 etc. The cross-examination of management witness was adjourned again. However there is absolutely no cross examination on the evidence discussed above. The charges of fraud alleged against workman is supported by evidence. The amount of manager cheque Rs. 41,380 was deposited in Joint account in name of CSE and other account holders. CSE had withdrawn amount. FDR were deposited as Security for the loan taken by other account holders. Therefore the argument advanced by learned counsel for workman that charges alleged against workman for fraud and tampering are not supported by evidence cannot be accepted. Document W-5 rather ME-1 to 31 produced in Enquiry Officer have been admitted by CSE and careful consideration of those documents shows that though workman was not entitled to receive any amount from FDR amount was deposited in Joint Account 6547/37 and CSE withdrawn amount from it. The document Exhibit M-2. M-3 shows that amounts were deposited by CSE. As per Exhibit M-3 amount Rs. 10,800 was withdrawn requesting to take debit entry. Therefore the charges alleged against workman are supported by documentary evidence and oral evidence of MW-1 Ramkeshwani. For above reasons, I record my finding in Point No. in Affirmative.

11. Point No. 2 the charges proved from evidence in Enquiry Proceedings relates to deposit of amount of FDR in Joint Account by CSE with other account holders. However CSE withdrawn amount from said joint Account, when establishing his right to receive his amount of FDR. The charges proved against workman are of serious

nature. Workman has not produced any evidence that he has no right to receive amount of FDR deposit in joint account. Workman has withdrawn amount from Joint account amounts to grave misconduct. The transaction constituting misconduct are cleverly carried out by CSE. The evidence in normal cases of fraud and tampering could not be expected in such a case. It is surprising to say that findings of Enquiry Officer are supported by same evidence. The findings of Enquiry Proceedings are not perverse. Any serious misconduct of tampering and fraud committed by workman is supported by evidence. Punishment of dismissal from service cannot be said excessive or disproportionate. In my considered view, punishment of dismissal does not call for interference. For reasons discussed above, I record my finding in Point No. 2 in Affirmative.

12. In the result, award is passed as under:—

(1) The action of the management of Regional Manager, UCO Bank, Indore in dismissing the services of workman Shri Parasmal Jain S/o Shri Nemichand Jain w.e.f. 31-8-99 is legal and proper.

(2) Workman is not entitled to any relief.

13. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R.B. PATLE, Presiding Officer

नई दिल्ली, 6 मई, 2015

**का.आ. 946.—**औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ महाराष्ट्रा, के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण /श्रम न्यायालय जबलपुर के पंचाट (संदर्भ सं. 258/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.05.2015 को प्राप्त हुआ था।

[सं. एल-12011/39/99-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 6th May, 2015

**S.O. 946.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.No. 258/99) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur* as shown in the Annexure, in the industrial dispute between the management of Bank of Maharashtra and their workmen, received by the Central Government on 05/05/2015.

[No. L-12011/39/99-IR (B-II)]

RAVI KUMAR, Desk Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
JABALPUR**

**No. CGIT/LC/R/258/99**

Dy. General Secretary,  
Union of the Maharashtra Bank Employees,  
Jabalpur Unit Hanuman Mandir Gate,  
Yadav Colony,  
Jabalpur.

...Workman/Union

**Versus**

Regional Manager,  
Bank of Maharashtra,  
Regional Office,  
Wright town,  
Jabalpur.

...Management

**AWARD**

Passed on this 23rd day of March, 2015

1. As per letter dated 16-7-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No.L 12011/39/99-IR(B-II). The dispute under reference relates to:

- "(i) Whether the management of Bank of Maharashtra is justified in imposing the penalty of Censure upon Shri P.S. Phatak, Typist? If not, to what relief the workman is entitled to?"
- (ii) Whether the recover of Rs. 4715/95 ordered from the salary of the workman for the loss suffered by the management is in accordance with the provisions of Sastri Award/Desai Award/bipartite settlement? If not, what relief, is the said workman entitled to?"

2. After receiving reference, notices were issued to the parties. Statement of claim is filed by Dy. General secretary of Union at Page 3/1 to 3/3/. Case of 1st party Union is that workman Shri P.S. Pathak was working as typist in IIInd party Bank from 16-8-83. He was working with with sincerity and honesty. His service conditions of Bank are covered by Sastry Award, Desai award and Bipartite settlement. That vide order dated 19-3-97, punishment of censor was imposed against workman. Amount of Rs. 4715.95 was recovered from him by management. Union submits that punishment is unreasonable, unjustified.

3. It is further submitted that the management had issued chargesheet to workman on 6-2-95. the charges were vague,

workman submitted reply to chargesheet. Management did not consider his reply. Enquiry was initiated is illegal. Enquiry Officer was appointed to the employee in pay of the Bank. From such Enquiry Officer, fair enquiry cannot be expected. Enquiry officer acted as prosecutor other than a judge. Enquiry was not conducted following proper procedure. Workman was not given opportunity for his defence. Principles of natural justice were not followed on 28-12-1976 Enquiry Officer submitted his findings. Findings of Enquiry Officer that charges against workman are proved are perverse. Enquiry Officer not given importance to the defence of workman. Workman has not committed any misconduct alleged in chargesheet. He is punished without his fault. The findings of Enquiry officer are illegal. Workman challenged order of his dismissal filing appeal. It is reiterated that the order of punishment was issued by Competent Authority. On such ground, Union is praying to quash the order of punishment.

4. Management of IIInd party submitted Written Statement at Page 5/1 to 5/5/ opposing claim of Union. IIInd party denied allegation of Union. It is reiterated that the punishment imposed against workman of censor and recover of amount towards the loss suffered by the management. It is submitted that Shri P.S. Pathak workman was working as clerk. He was deputed to Jabalpur branch for handling saving Bank counter on 4-8-90. The balance of Rs. 20511.60 at the foot of the account on the ledger folio No. 54 of S.B. Ledger NO. 14 in respect of Saving Bank Account No. 5176 of Shri Harbans Singh was carried over by him at Page No. 122 of the same ledger. Workman posted one debit entry i.e. cheque No. 018606 on 4-8-90 reducing the balance to Rs. 10511.60 while carrying over the balance at Page 122 of same ledger, balance was not recorded as per Page 54 of the ledger. Lapse on his part resulted into two debit posting of Rs. 10,000 and 3000 on same page on different dates. Workman Shri Pathak omitted posting of Rs. 10,000. Chargesheet was issued to workman about negligence in duties. Because of lapse on part of workman, overdraft of Rs. 9431 was created. Enquiry was conducted against workman. After receiving report of Enquiry Officer, punishment of censor was imposed against workman and 50% amount of the loss suffered was incurred by him. Action of management is proper and legal.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the management of Bank of Maharashtra is justified in imposing the penalty of Censure upon Shri P.S. Pathak, typist?	In Affirmative
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(ii) Whether the recovery of Rs. 4715/95 ordered from the salary of the workman for the loss suffered by the management is in accordance with the provisions of Sastri Award/Desai Award/bipartite settlement?

In Affirmative

(iii) If not, what relief the workman is not entitled Workman is entitled to?" to any relief.

### REASONS

6. Workman raised dispute through Union. Statement of claim is filed at Page 3/1 to 3/4 . Written Statement is filed at Page 5/1 to 5/5. However the Union failed to participate in reference proceeding. Evidence of 1st party workman was closed on 21-2-2014 and again as per order sheet 12-8-2014. Management also failed to adduce evidence. Evidence of management is closed on 1-12-2014. Both parties failed to participate in reference proceeding despite repeated notices issued. Copy of Enquiry Proceeding are produced on record. Workman has failed to adduce any evidence to establish that enquiry conducted against him is not proper and legal.

7. IInd party also failed to participate in reference proceeding and proved the documents of Enquiry Proceedings. On failure of both parties to participate in reference proceedings, the action of management cannot be said illegal. For above reasons, I record my finding in Point No. 1, 2 in Affirmative.

8. In the result, award is passed is under:—

- (1) Action of the management is proper and legal.
- (2) Workman is not entitled to any relief.

9. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 6 मई, 2015

**का.आ. 947.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (संदर्भ सं. 20/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.05.2015 को प्राप्त हुआ था।**

[सं. एल-12011/18/95-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 06 May, 2015

**S.O. 947.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 20/99) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Bank of India and their workmen, received by the Central Government on 05/05/2015.

[No. L-12011/18/95-IR(B-II)]

RAVI KUMAR, Desk Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

**No. CGIT/LC/R/20/99**

Secretary,  
Bank of India Employees Union,  
Through Bank of India,  
Regional Office, Napier Town,  
Russel Chowk,  
Jabalpur

...Workman/Union

### Versus

Regional Manager,  
Bank of India,  
Govind Kunj Colony,  
Napier town,  
Russel Chowk, Jabalpur

...Management

### AWARD

Passed on this 23rd day of March, 2015

1. As per letter dated 4-12-98 by the Government of India, Ministry of Labour, New Delhi the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12011/18/95-IR(B-II). The dispute under reference relates to:

“Whether the action of the management of bank of India Jabalpur in not regularizing the services of the 13 casual workmen working against the vacant posts of sub staff from the dates of their appointment and terminating the services of five of them as shown below is legal and justified? If not, to what relief these workman are entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted individual statement of claims.

3. IInd party management filed Written Statement at Page 26/1 to 26/13 opposing claim of workmen.

4. Application on behalf of workman is filed for withdrawal of the case. Management has no objection. As workman has withdrawn his claim, the dispute between parties ceased to exist. The reference stands disposed off as withdrawn.

5. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R.B. PATLE, Presiding Officer

नई दिल्ली, 6 मई, 2015

**का.आ. 948.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार युनियन बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण /श्रम न्यायालय जबलपुर के पंचाट संदर्भ संघा (315/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/05/2015 को प्राप्त हुआ था।

[सं. एल-12012/96/97-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 6th May, 2015

**S.O. 948.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 315/97) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Union Bank of India and their workmen, received by the Central Government on 05/05/2015.

[No. L-12012/96/97-IR(B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/315/97

Shri Sunderlal Sahu,  
S/o Ayodhya Prasad Sahu,  
R/o Patloni,  
Post Gangotri Complex,  
TT Nagar, Bhopal

...Workman

*Versus*

Chief Manager,  
Union Bank of India,  
Aanchalik Office,  
Gangotri Complex,  
T.T. Nagar,  
Bhopal

...Management

#### AWARD

Passed on this 12th day of March 2015

1. As per letter dated 20-11-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/96/97-IR(B-II). The dispute under reference relates to:

"Whether the action of the management of Union Bank of India in terminating the services of Shri Sunder Lal Sahu w.e.f. 30.9.94 is legal and justified? If not, to what relief the said workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim through General secretary Bank Employees Union at page 3/1 to 3/6. The Case of workman is that he was appointed as peon in IIInd part Bank on 30-12-93. After his name was sponsored through Employment Exchange he was interviewed. He was posted at Chopra branch. It is alleged that Branch Manager do not give his information about the books and registers maintained in the Bank. Ist party workman was carrying his work with held of other peon. Workman alleges that he was required to work both at residence of the Branch Manager and office for more than 12 hours every day. Workman was tired. He expressed his difficulties. It was also alleged that Branch Manager was sending him far distance on foot for purchase of cigarette and vegetables etc. the workman had complained against the Branch Manager to the Regional Office. By this complaint, Branch Manager spoiled his appraisal report. Branch Manager recommended his termination from service. Workman submits that he was appointed on probation period. His probation period was extended for 3 months on 22-6-94. It is also alleged that Branch Manager had submitted appraisal report in pursuance of letter dated 13-8-94. The report was sent adverse spoiling his character. His services were terminated from 30-9-94 without any notice or paying one month's salary. When workman raised dispute, the conciliation failed and dispute has been referred. Workman submits that he had continuously worked for 270 days from 30-12-93. Termination of his service without notice or without payment of retrenchment compensation is illegal. On such ground, workman prays for his reinstatement with back wages.

3. IIInd party submitted Written Statement at Page 9/1 to 9/7. IIInd party submits that workman was appointed on probation. He not shown improvement in his performance. Therefore his services were terminated from 30-9-94 as per terms of appointment order. It is reiterated that the service of workman was not satisfactory his probation was extended for 3 months. Despite of it, workman not shown any improvement. Workman was appointed on probation as per letter dated 30-12-93. Condition No. 2 of the appointment order provides his appointment on probation for 3 months. The probation period is not automatically completed. Unless the service is found satisfactory, appointment on probation period cannot be confirmed. That workman was terminated as his work was not found satisfactory during probation period or extended period of probation for 3 months. The allegations against Branch Manager were found frivolous and afterthought. The workman had secured copies of confidential appraisal form

therefore he is not entitled to any relief. On such ground, IIInd party prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of Union Bank of India in terminating the services of Shri Sunder Lal Sahu <i>w.e.f.</i> 30-9-94 is legal and justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

### REASONS

5. Workman is challenging termination of his service for violation of Section 25-F of ID Act. Management has denied submissions on the ground that workman was terminated as his service during probation period was not found satisfactory. Workman did not show improvement in his work.

6. Ist party workman filed affidavit of his evidence supporting his contentions in statement of claim. That he had taken charge as peon 30.12.93. He was appointed in handicapped quota. He was required to work 12-14 hours every day. He was required to do domestic work at residence of Branch Manager. He was arrested by Branch Manager. His appraisal reproto were also spoiled. His probation period was extended by 3 months. He completed more than 240 days continuous service. His services are terminated without notice. In his cross-examination, workman says he is literate person. He received appointment letter from Bank. He denies that his work was not satisfactory during probation period. He also denies that he did not improve his performance during extended probation period. He denies that he was terminated from service as his performance during probation period was not satisfactory.

7. Management filed affidavit of witness Shri Bhaurau Koche supporting contentions of IIInd party in Written Statement as workman was appointed on probation. His work was not found satisfactory during probation period and extended period of probation. In his cross-examination, management's witness admits that workman was selected from quota of handicapped persons. Workman was working under his as peon. That at the time of submitting approval report, he noticed that workman was not properly working. He was unable to take appropriate record. He was not able to give proper forms to the customers. Workman had difficulty in walking. While working in the Bank he was required to go from one room to the other but he could not walk easily. Management's witness claims ignorance about complaint submitted by workman to the higher authorities that workman was not able to read the documents called

through him. He submitted report that his work was not satisfactory. Workman was not given one months pay. Any enquiry was not conducted against workman. Workman was not terminated by him. On directions of Regional office, workman was terminated.

8. Workman was appointed on 30-12-93 and terminated on 30-9-94 as such he completed more than 240 days continuous service.

9. Learned counsel for workman submitted written notes of argument. It is emphasized that the conditions in appointment order cannot prevail over statutory provisions. The termination without conducting enquiry caused stigma on workman. The complaints made by workman were not inquired. The evidence of management's witness that allegations made cannot be accepted. Workman is entitled to protection as per Section 47 of Protection of Handicapped Persons Act 1995. Learned counsel for workman pursuing his argument relied on ratio held in

Case between management of K.S.R.T. Corporation Bangalore *versus* M. Boraiah reported in AIR 1983-SC-1320. Their Lordship held retrenchment as defined in Section 2(oo) covers every case of termination of service except those which have been embodied in the definition, discharge from employment or termination of service of a probationer would also amount to retrenchment. As such where while discharging a probationer requirements of Section 25-F had not been complied with the same was void.

In case of Syed Azam Hussaini *versus* Andhra Bank Ltd. reported in AIR 1995 SC-1352, their Lordship held termination of services before expiry of extended period without showing any reasonable cause amounts to retrenchment. One months wages in lieu of notice not paid at the time of such retrenchment but subsequently termination was held illegal.

During course of argument, there was no dispute that IIInd party is an Industry and workman is covered under Section 2(s) of ID Act. The services of workman are terminated without notice in violation of Saction 25-F of ID Act. Therefore I record my finding in Point No. 1 in Nagative.

10. *Point No. 2*—Ist Party workman was appointed on 30-12-93. His services are terminated form 30-9-94. As held in AIR-1995 SC-1352, the workman was granted compensaiton Rs. 50,000- observing that services sere terminated 24 years back, In present case, services of workman are terminated on 30-9-94 about 21 years before therefore compensation Rs. 75,000/- would be appropriate.

11. In the result, award is passed as under:—

- (1) The action of the management of Union Bank of India in terminating the services of Shri Sunder Lal Sahu *w.e.f.* 30-9-94 is not legal and proper.

(2) The party is directed to pay compensation Rs. 75,000/- within 30 days from the publication of award.

In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

12. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R.B. PATLE, Presiding Officer

नई दिल्ली, 06 मई, 2015

**का.आ. 949.—ओद्योगिक विवाद अधिनियम, 1947** (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नागपुर के पंचाट (संदर्भ सं. 29/2007) प्रकाशित करती है, जो केन्द्रीय सरकार को 05/05/2015 को प्राप्त हुआ था।

[सं. एल-12012/23/2007-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 6th May, 2015

**S.O. 949.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/2007) of the Cent. Govt. Indus . Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 05/05/2015.

[No. L-22012/23/2007-IR(B-I1)]  
RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/29/2007 Date: 14.01.2005

**Party No.** : The Regional Manager,  
Central Bank of India,  
Kakani Oil Mill Compound,  
Nr. Dhramadaya Cotton Fund,  
Fund, Amravati, Maharashtra.  
*Versus*

**Party No. 2** : Sh.NileshManohar Ambulkar  
C/o. Sh. Pravin Deshmukh  
Pravin Nagar, behind VMV  
College, Amravati, (M.S.)

#### AWARD

(Dated: the 14th January, 2015)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employer, in relation to the management of Central Bank of India and their workman, Shri Nilesh Manohar Ambulkar, for adjudication, as per letter No. L-22012/23/2007-IR (B-II) dated 28.05.2007, with the following Schedule:—

"Whether the action of the management of Central Bank of India, through its Regional Manager, Amravati in awarding the punishment of discharge of the workman namely Shri Nilesh Manohar Ambulkar from Bank's service *vide* order dated 11.08.2004 is legal and justified and whether the workman is entitled to be reinstated in the Bank with full back wages and all consequential benefits? If not, to what relief is the workman is entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman, Shri Nilesh Manohar Ambulkar, ("the workman" in short) filed the statement of claim and the management of Central Bank of India ("party no. 1" in short) filed the written statement.

The case of the workman as projected in the statement of claim is that he was appointed as a clerk on compassionate ground in the services of party no. 1, *vide* order dated 25.07.1992 and lastly he was posted as such at Sakkaarsath, Amravati branch and problems cropped up in his family life and 20 days after his marriage, i.e. on 25.02.2003, his wife left him and went to her maternal house at Dewas and initiated a proceeding under section 125 of the code of criminal procedure against him for maintenance and he was required to attend the court frequently at Dewas and to bear considerable expenses and the court passed order to pay a sum of Rs. 1500/- per month as maintenance to his wife and due to the said happening, he sustained heavy financial burden and required to raise money from private money lenders and the moneylenders used to threaten him from recovery, due to which, he sometimes used to remain absent from duty and he also suffered from kidney problem and was hospitalized in the hospital of Dr. Sune at Amravati and due to such burdens, he went into depression and developed suicidal tendency and attempted to commit suicide and he was mentally derailed and was person of unsound mind and was under the treatment of a psychiatrist and was not in a position to understand the consequences of his acts and omissions and due to his absence from duties, the party no. 1 issued show-cause notices to him and he gave his explanation and he was hospitalized for his treatment for mental illness, in the

hospital of Dr. Srikant Deshmukh, Psychiatrist at Amravati from 25.04.2003 to 15.11.2005 and some of the notices issued to him by party no. 1 returned un-severed due to the fact mentioned above and so also, due to change of residence. The further case of the workman is that on 05.08.2004, public notice was published in daily "Hindustan" of Amravati, calling upon him to remain present for the enquiry and as he was under the attack of mental ill health at that time, his brother sent a telegram to Bank, informing that due to illness, he (workman) would not be able to remain present in the enquiry and on 30.12.2005, he went to the Bank and came to know that he had been discharged from services and he received two letters at the same time from the Bank and was informed that all the records pertaining to his enquiry had been sent to Nagpur and the enquiry was held ex-parte and no proper notices were served on him and hence, the enquiry was held against him in violation of the principles of natural justice and he was prevented from attending duties for sufficient cause, which was beyond his control and as such, the order of his discharge from services needs to be set aside.

The workman has prayed for his reinstatement in service with full back wages.

3. The party no. 1 in its written statement has placed *inter-alia* that the father of the workman was working was employed as a clerk with it and as he died in harness, the workman was employed as a clerk on compassionate ground, *vide* appointment order dated 21.07.1992 and the workman was working at Sakkaarsath Branch, Amravati, before his discharge from service by way of punishment and the track record of the workman was absolutely unsatisfactory and he was a habitual absence and he used to remain absent unauthorisedly and earlier, it had taken lenient view and had inflicted only minor punishments, with a view to give opportunity to the workman to improve his performance and to become regular in attending his duties, but there was no improvement in the attendance record of the workman and he did not mend his behavior and continued to be in the habit of remaining absent without intimation and when his explanations were called for, he accepted his mistakes and he was awarded with the punishment of "censure" on two occasions and the Bank management has no knowledge about the personal difficulties of the workman, but the Bank management was aware of the fact of filing of the case under section 125 of the criminal procedure code against he workman for maintenance in the court at Dewas. The party No. 1 has denied the allegations of the workman raising loans from private money lenders and of his remaining absent from duty, due to the threats given by the money lenders and about the workman suffering from kidney problem and mental illness and depression. It is pleaded by party No. 1 that such defence has been raised by the workman as an afterthought, to cover up his own misconduct of unauthorized absence and infact, when it had called upon

the workman to resume duty by issuing memos and show cause notices, he did not respond positively and continued to remain absent and he is seeking excuse on the ground of his alleged ill-health, mental disorder, depression etc. and due to continuous absence of the workman from duty, show-cause notice was issued to him and initially a memo dated 27.09.2003 was issued to the workman for the period of his continuous absence from 22.5.2003 and onwards, but he failed to submit any reply to the same, therefore, charge sheet dated 04.11.2003 came to be issued and it was at that stage, the workman submitted one reply dated 06.11.2003 seeking lame excuses for his absence from duty and the reasons put forth by him in his said reply were altogether different than those mentioned by him in the statement of claim, particularly in relation to his alleged illness and in the medical certificate produced by the workman before the ALC during conciliation proceedings, thought it was mentioned that he was under medical treatment for mental illness, the said certificate did not speak of hospitalization at all and therefore, falsifies the contentions of the workman and most of the notices, letters and notices of enquiry etc issued to the workman in his last known address available with the Bank came back un-served, as he was found unavailable at his residence and the workman had never informed the Bank about change of his residential address and the same clearly demonstrates the callous and indifferent attitude of the workman towards his employment.

The further case of the party No. 1 is that Shri S.S. Gaidhane was appointed as the Enquiry officer and the first sitting of the enquiry was fixed on 03.05.2004 and notice of the enquiry dated 27.04.2004 was sent to the workman by registered post with A.D. but the same was returned back without service, so attempt was taken to serve the notice by hand delivery through a messenger, but the notice could not be served, as the workman was not available in his residence, so the enquiry was adjourned to 12.05.2004 and the notice same to be published in the local news paper, "Hindustan" on 04.05.2004 and during the course of the enquiry dated 12.05.2004, the Enquiry Officer took on record a telegram purportedly sent by one Shir Sunanda Vichare, but however, the relationship between the workman and the sender of the telegram, Shri Vichare was not made known to the Enquiry Officer, even then, to give an opportunity to the workman to take part in the enquiry, the Enquiry Officer adjourned the case to 19.05.2004 and notice was sent to the workman in his last known address, but the workman did not respond and failed to attend the enquiry, so the Enquiry Officer closed the enquiry ex-parte, after taking note of all the documents which were placed on record by the presenting officer, in support of the charge sheet and therefore, the workman has falsely alleged about his mental illness during the period in question and that he could not remain present in the enquiry and the Enquiry Officer submitted his report to the Disciplinary Authority

on 22.05.2004 and second show cause notice dated 22.07.2004 was issued to the workman by registered post with A.D. but the same was returned back without service, as he was not found at his last known address and for that, the Bank published the second show cause notice in the local daily from Amravati, "Hindustan" on 23.07.2004 and the workman did not respond to the said notice, so the Disciplinary Authority finally passed the order of discharge of the workman from service on 11.08.2004, taking a lenient view in the matter by not dismissing the workman from services and thereby entitling the workman to claim provident fund and gratuity etc. and the order of discharge was sent to the workman by R.P.A.D., but as the same returned un-served, the order of discharge was published in the local newspaper, Amravati, "Hindustan" on 12.08.2004 and a copy of the said order was also displayed on the notice board of the Bank and after his discharge, the workman on 30.12.2005 approached the Bank for the first time and he was asked to contact Sakkaarsath Branch to collect the copy of his discharge and the workman has to blame himself for his indifferent conduct and approach towards the enquiry and the workman is not entitled for any relief.

4. No rejoinder has been filed by the workman.

5. As this is a case of discharge of the workman from service as a punishment in the departmental enquiry conducted against him, the fairness or otherwise of the departmental enquiry was taken up for consideration as a preliminary issue and by order dated 16.03.2012, the enquiry conducted against the workman was held to be illegal, improper and not in accordance with the principles of natural justice.

As the party No. 1 had made prayer in the written statement itself, to give them the chance of proving the charges against the workman by adducing evidence before this Tribunal, in case of holding the departmental enquiry not to be fair and proper, party No. 1 was given the scope to adduce evidence to prove the charges levelled against the workman.

7. For better appreciation of the matter, I think it proper to mention the charge levelled against the workman in the charge sheet dated 04.11.2003. The same reads as follows:

"Mr. N.M. Ambulkar, while working at our Shivaji Nagar branch remained unauthorisedly absent without intimation with effect from 22.07.2003 for a period exceeding 30 days.

This act on the part of Mr. N.M. Ambulkar amounts to gross misconduct. Mr. N.M. Ambulkar is therefore charged with gross misconduct for the above act under para 19.05(p) of the Bipartite settlement."

8. In order to prove the charge against the workman, party No. 1 has examined one witness, namely, Shri Deepak

S. Bansod, besides placing reliance on the documentary evidence produced by it.

In rebuttal, the workman has examined himself as a witness.

9. So far the oral evidence is concerned, Shri Deepak, the witness for the party No. 1 in his examination-in-chief on affidavit has reiterated the facts mentioned in the written statement by the party No. 1. This witness has also proved the leave applications submitted by the workman on the ground of sickness dated 25.07.2003, 02.08.2003, 05.08.2003 and 16.08.2003 as Exts. M-III to M-VI respectively and the muster roll for the period from July, 2003 to November, 2003 as Ext. M-VII.

In his cross-examination, the witness for the party No. 1 has admitted that the workman had filed the leave applications on the ground of his sickness.

10. The evidence of the workman on affidavit is more or less in the same line of the facts mentioned by him in the statement of claim.

In his cross-examination, the workman has admitted that he remained absent from duty from 22.07.2003 and *vide* Ext. M-II, for the first time, he requested the Bank on 25.07.2003, for sick leave from 24.07.2003 to 30.07.2003, on the ground of not feeling well and along with Ext. M-III, he did not file any medical certificate in support of his sickness and in the muster roll, he was shown as absent from duty from 24.07.2003 to 30.07.2003 by the management at first, but after receipt of Ext. M-III, management corrected the muster roll and shown him to be on sick leave and without resuming his duty on 31.07.2003, or going to the Bank personally, he sent applications, Exts M-IV to M-VI, for sick leave for the periods from 31.07.2003 to 02.08.2003, 04.08.2003 to 09.08.2003 and 11.08.2003 to 16.08.2003 respectively, on the ground of "not feeling well" and along with his applications, he did not submit any supporting documents regarding his illness and as he did not submit any supporting document, his leave application dated 31.07.2003 was rejected and he was shown absent from duty. The workman has further admitted that he remained absent from duty till 04.11.2003 and he does not have any document to show that after 16.08.2003, he had submitted any application to the Bank about the reason of his remaining absent from duty and he has also not filed any such document on record and he did not file any reply to the memo dated 27.09.2003, Ext. M-VIII and to the charge sheet dated 04.11.2003 and even after submission of the charge sheet, he did not submit any document before the management of the Bank in support of his illness. The workman has also admitted that *vide* Ext. M-IX, the order dated 14.05.2002 he was censured by the Disciplinary Authority for remaining unauthorized absent from duty.

11. In the written notes of argument, it was submitted by the learned advocate for the party No. 1 has adduced

both oral and documentary evidence to prove the charge levelled against the workman and it is clear from the evidence of the witness, Shri Dipak that the workman remained unauthorized absent from duty from 22.07.2003 for a period exceeding 30 days and the muster roll also indicates that the workman remained absent from duty from 22.07.2003 to 04.11.2003, the date of submission of the charge sheet and the workman casually moved some leave application and except his first leave application for leave from 24.07.2003 to 30.07.2003, the other applications were rejected and subsequently, the workman did not submit any leave application and he was marked absent from duty in the muster roll from 01.08.2003 and though, the witness for the party No. 1 has been cross-examined at length, his evidence has not been shaken and there is hardly any contradiction in his evidence and this witness has mentioned that the workman was discharged from service for his unauthorized absence, by way of punishment.

It was further mentioned by the learned advocate for the party No. 1 that the workman in his cross-examination has admitted about his remaining unauthorized absent from duty and he has cited various reasons for his remaining such absent including physical and mental illness and most of the reasons were cited for the first time before this Tribunal and such pleas were not taken in the statement of claim and from the evidence adduced by the party No. 1 and so also, from the evidence of the workman himself, it is crystal clear that party No. 1 has been able to prove the charge levelled against the workman of remaining unauthorized absent from duty from 22.07.2003 for a period exceeding 30 days and as such, there is no scope to interfere with the punishment.

12. Per contra, in the written notes of argument, it was submitted by the learned advocate for the workman that due to domestic problems and suffering from kidney problem, the workman suffered from mental depression and he was under the treatment of psychiatric at Dr. Shrikant Deshmukh Hospital at Amravati from 25.04.2003 to 15.11.2005 and during the said period, he was not in proper mental condition and the said fact has been duly corroborated by Ext. W-IX, the medical certificate given by Dr. Shrikant Deshmukh and due to illness, which was beyond the control of the workman, he was unable to attend his duty and Party No. 1 has failed to prove the charge that the workman remained unauthorized absent from duty without any reasonable cause and the workman is entitled for reinstatement I service wit continuity and full back wages.

In support of the contentions, the learned advocate for the workman has placed reliance on the decisions reported in 1991(11) CLR-228 (Kashinath Vs General Manager) and 1996(1) CLR-439 (Dharamraj Natekar Vs Unique Industries and others).

13. At this juncture, I think it necessary to mention about the principles enunciated by the Hon'ble Constitutional Bench of the Apex Court in the decision reported in 1970 II LLJ-1 (SC) (The Management of Travancore Titanium Products Ltd. Vs Their Workman) regarding the procedure to be adopted by the Tribunal, where the departmental enquiry is held to be unfair and the employer is allowed to lead evidence to prove the charges against the workman. The Hon'ble Apex court have held that:

"Before the Tribunal, the preliminary question which arose for decision was whether the domestic enquiry held against Pillai was fair or not. It is well settled that if the domestic enquiry held against an industrial employee is fair, the findings recorded by the Enquiry Officer cannot be successfully challenged unless it is shown that the said findings are perverse in the sense that they are not based on any evidence at all. If, on the other hand, the enquiry is held to be unfair, the said findings do not justify the order of dismissal; and it could be opened to the employer to justify the dismissal by leading evidence before the Tribunal. In the present case, the employer has adopted this alternative course; and as we shall presently point out, the Tribunal has dealt with the evidence led before it by the appellant, because it held that the enquiry was unfair and had, therefore, to examine the merits of dismissal itself.

It is well settled that where dealing with an industrial dispute arising from the dismissal of an industrial employee, the employer fails to prove to the satisfaction of the Tribunal that the domestic enquiry was fair, it is opened to him to lead evidence justifying the impugned dismissal; and in such a case the Tribunal has to consider the evidence itself and decide whether the dismissal was justified or not. Ordinarily, the decision of such a question depend upon appreciating evidence, both the oral and documentary."

14. I also think it proper to mention here the principles enunciated by the Hon'ble Apex Court in the decision reported in AIR 1976 (SC)-98 (Bharat Iron Works Vs Bhagubhai Balubhai Patel). The Hon'ble Apex Court have held that:

"If on the other hand, there is violation of the principles of natural justice, the Tribunal will then give opportunity to the employer to produce evidence, if any and also to the workman to rebut it if he so chooses. In the later event, the Tribunal will be entitled to arrive at its own conclusions on merits on the evidence produced before it with regard to the proof on the misconduct charged; and the Tribunal, then, will not be confide merely to consider whether a *prima facie* case is established against the employee. In other words, in such an event, the employer's findings in the domestic enquiry will lapse and these will be substituted by the independent conclusions of the Tribunal on merits."

So, keeping in view, the principles enunciated by the Hon'ble Apex Court as mentioned above, now, the present case in hand is to be considered to find out as to whether, the Party No. 1 has been able to prove the charge levelled against the workman.

15. On perusal of the documentary evidence produced by the Party No. 1 and so also the oral evidence adduced by it, it is found that the workman remained absent from duties from 22.07.2003 and he submitted leave applications, Exts. M-III to M-VI on the ground of "not feeling well" for leave up to 16.08.2003 and thereafter also, he remained absent from duties exceeding 30 days without any leave application or without any intimation to the concerned authority of Party No. 1 or without any sanction leave.

As already mentioned before hand, the workman in his cross-examination has admitted that he remained absent from duty from 22.07.2003 and along with his leave applications he did not submit any supporting document in support of his illness and as such, his leave application was rejected and he was shown absent from duty and he has no document to show that after 16.03.2003, he had submitted any application to the bank intimating about the reason of his remaining absent from duty and he has not filed any such document on record and he did not file any document in support of his illness, even submission of the memo and charge sheet dated 04.11.2003 against him by the Party No. 1.

The workman has taken a plea that soon after his marriage, his wife filed a case against him U/s 125 of the Code of Criminal Procedure for maintenance and he also suffered from kidney problem and he raised money from private money lenders and due to the pressure given by the said money lenders for realization of the loan amounts, he suffered from mental illness and remained under the treatment of Dr. Shrikant Deshmukh, Psychiatrist at Amravati from 25.04.2003 to 15.11.2005. In the statement of claim, the workman has mentioned that in 2004, he was hospitalized in the hospital of Dr. Shrikant Deshmukh. Except a certificate issued by Dr. Shrikant Deshmukh dated 15.11.2005, the workman has not filed any other document in regard to his illness. According to the said certificate, the workman was under the treatment of Dr. Shrikant Deshmukh from 25.04.2003 to 15.11.2005, for severe depression. The said certificate does not show that the workman was hospitalized in 2004. The workman has not filed a single document to show that he suffered from kidney problem or urine stone as claimed by him in his show cause dated 06.11.2003. The workman has mentioned in his show cause that on medical examination, it was found that he was suffering from urine stone and he was under medical treatment. In his show cause dated 06.11.2003, the workman had not whispered a single word regarding his suffering from mental depression and that he was under the treatment of Dr. Shrikant Deshmukh. In his statement

of claim, the workman has mentioned that he suffered from kidney problem and was hospitalized in the hospital of Dr. Sune at Amravati but not a single document has been filed in regard to the same. From the materials on record, it is clear that the workman has taken the plea of suffering from mental depression and kidney problem as an after thought. So, no reliance can be placed on the evidence of the workman and so also on the certificate of illness to hold that due to mental depression or any other illness, the workman remained absent from duties.

From the materials on record, it is found that the workman remained unauthorized absent from duties for a period exceeding 30 days and Party No. 1 has been able to prove the charge levelled against the workman.

16. Now, the only question remains for consideration is the quantum of punishment imposed against the workman. According to the learned advocate for the workman, the punishment of discharge of the workman from services is unjustified. In support of the contention, the learned advocate for the workman placed reliance on the two decisions reported in 1991 II CLR-228 (*supra*) and 1996 I CLR-439 (*supra*). However, with respect, I am of the view that the decisions cited by the learned advocate for the workman have no clear application to the case in hand, as the facts and circumstances of the cases referred in the decisions are quite different from the facts and circumstances of the present case in hand.

It is clear from the materials on record that the workman had been awarded punishment of "Censure" twice for remaining unauthorized absent from duties earlier. Inspite of such punishments, the workman did not amend his behaviour and again remained unauthorized absent from duty for more than 30 days, which is a gross misconduct according to the Bi-partite settlement, under the provisions of which, he was charge sheeted. Hence, the punishment of discharge from services passed against the workman cannot be said to be unjustified. So, there is no scope to interfere with the punishment. Hence, it is ordered:

## **ORDER**

The action of the management of Central Bank of India, through its Regional Manager, Amravati in awarding the punishment of discharge of the workman namely Shri Nilesh Manohar Ambulkar from Bank's service vide order dated 11.08.2004 is legal and justified. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 6 मई, 2015

**का.आ. 950.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कानड़ा पत्तन न्यास के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम

न्यायालय अहमदाबाद के पंचाट (संदर्भ सं. 70/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.05.2015 को प्राप्त हुआ था।

[सं. एल-37011/01/2011-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 6th May, 2015

**S.O. 950.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 70/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court Ahmedabad as shown in the Annexure, in the Industrial dispute between the management of Kandla Port Trust and their workmen, received by the Central Government on 05/05/2015.

[No.—L-37011/01/2011-IR(B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

##### Present....

Binay Kumar Sinha,  
Presiding Officer, CGIT cum Labour Court,  
Ahmedabad, Dated 6th August, 2014

##### Reference: (CGITA) No.-70/2011

The Chairman,  
Kandla Port Trust,  
Post Box No.-50,  
Gandhidham, Kutch (Gujarat)

##### And

Their Workman  
Through The General Secretary,  
Transport & Dock Workers Union,  
21, Yogesh Building, Plot No. 586/12-C,  
Gandhidham, Kutch-370201

For the 1st party              Shri K.V. Gadhia, Advocate  
    Shri M.K. Patel, Advocate

For the Second Party:        None

#### AWARD

The Central Government/Ministry of Labour, New Delhi *vide* order No. L-37011/01/2011 - IR (B-II) dated 19.09.2011 referred the dispute for adjudication in respect of the matters specified in the Schedule:

#### SCHEDULE

"Whether the action of the management of Kandla Port Trust in not absorbing Shri Harish Shivnani in the post of Maistry in Civil Engineering Department

is legal and justified? What relief the concerned workman is entitled to?"

2. The 1st party appear through lawyer by executing Vakalatnama (Ext. 5), but the 2nd party failed to appear in spite of service of notice and even given several adjournment in the case for filing the S/c by the 2nd party. The 2nd party has failed to submit statement of claim and appears to have lost interest in this case. In such view of the matter, the terms of reference as per schedule is answered in affirmative that the action of the management of Kandla Port Trust in not absorbing Shri Harish Shivnani in the post of Maistry in Civil Engineering Department is legal and justified and the concern workman is not entitled to any relief.

Accordingly the reference is dismissed. No order of cost.

Let a copy of the award be sent for publication to the appropriate Government.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 6 मई, 2015

**का.आ. 951.**—ऑद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ोदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय अहमदाबाद के पंचाट (संदर्भ सं. 8/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.05.2015 को प्राप्त हुआ था।

[सं. एल-12011/157/2004-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 6th, May, 2015

**S.O. 951.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 8/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 05/05/2015.

[No. L-12011/157/2004-IR(B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

##### Present....

Binay Kumar Sinha,  
Presiding Officer, CGIT cum Labour Court,  
Ahmedabad, Dated 14th August, 2014

##### Reference: (CGITA) No. 8/2005

Adjudication Order No. L-12011/157/2004-IR(B-II)

Regional Manager,  
Bank of Baroda,  
Regional Office,  
Manoj Chambers,  
Summair Club Road,  
Jamnagar-361003  
...First Party

**And**

Their Workman  
Smt. Ladhiben D. Siyani,  
Through the Assistant Secretary,  
Gujarat Bank Workers Union,  
Rambar, 8, Jagnath Plot,  
Post Box No. 10,  
Rajkot-360001  
.....Second Party

For the 1st Party: Shri Vikram K. Mashar,  
Advocate

For the Second Party: None

**AWARD**

The Government of India/Ministry of Labour, New Delhi *vide* order No. L-12011/157/2004-IR (B-II) dated 11.01.2005 referred the dispute for adjudication to this Tribunal in respect of the matters specified in the Schedule:

**SCHEDULE**

"Whether the action of the management of Bank of Baroda, Jamnagar Regional Office in not giving the benefits of regular part time sweeper, *w.e.f.* 05.02.1987 to Smt. Ladhiben Siyani, as per appointment order No. JJL/151/ dated 5th February, 1987 and giving the benefit of this order *w.e.f.* 01.01.1997 is legal and justified? If not, what relief the workman is entitled to?"

2. In response to notice parties to the reference appeared and submitted respective pleadings *viz* statement of claim (Ext. 6) by the 2nd party/Union and written statement/(Ext/ 9) by the management (1st party. The S/c was filed on 15.02.2010 and W/s was filed on 14/09/2011. The matter is running for leading evidence by the 2nd party since pretty long time but neither the Union nor the concerned workman is attending the court. The onus is upon the workman/Union to prove the claim in terms of reference but 2nd party has slept over the matter and appeared to have lost interest. So, not desirable to give more opportunity to the 2nd party. The 1st party's lawyer Shri V.K. Mashar filed application (Ext. 10) on 07.08.2014 for passing necessary order and order was passed below Ext. 10 for closure of right of the 2nd party/Union/workman to lead evidence and for putting the record for passing award.

3. In the above circumstances the terms of reference as per schedule is answered in affirmative. The workman

concerned Smt. Ladhiben D. Siyani is not entitled to any relief.

The reference is, therefore, dismissed. No order of any cost.

Let two copies of the award be sent to the appropriate Government for publication u/s 17 of the I.D. Act.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 6 मई, 2015

**का.आ. 952.—**औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नागपुर के पंचाट (संदर्भ सं. 145/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.05.2015 को प्राप्त हुआ था।

[सं. एल-12012/26/2003-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 6th May, 2015

**S.O. 952.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 145/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Allahabad Bank and their workmen, received by the Central Government on 05/05/2015.

[No.L-12012/26/2003-IR(B-II)]  
RAVI KUMAR, Desk Officer

**ANNEXURE**

**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER,  
CGIT-CUM-LABOUR COURT, NAGPUR**

**Case No. CGIT/NGP/145/2003** Dated: 2.12.2014.

Party No. 1 : The Regional Manager,  
Allahabad Bank,  
Regional Office,  
Palm Road, Civil Lines,  
Nagpur (Maharashtra)

*Versus*

Party No. 2: Shri Prakash Ramchandra Kali,  
C/o Kishore Neware, Advocate,  
Shastri Ward, Ramtek,  
Nagpur. (Dead)  
Substituted by :  
(a) Smt. Nutan W/o Late Prakash  
(b) Shri Amit S/o Late Prakash  
(c) Shri Abhimanyu  
S/o Late Prakash.

## AWARD

(Dated: 2nd December, 2014)

I in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of the Regional Manager, Allahabad Bank and their workman, Shri Prakash R. Kali, for adjudication, as per letter No.L-12012/26/2003-IR (B-II) dated 19.05.2003, with the following schedule:—

"Whether the action of the management of Allahabad Bank, Nagpur (M.S.) in awarding the penalty of dismissal *w.e.f.* 04.03.2002 to Shri Prakash R. Kali, Clerk-cum-Cashier, Allahabad Bank, Civil Line Branch, Nagpur is justified? If not, what relief the workman concerned is entitled to?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman Shri Prakash R. Kali, ("the workman" in short) filed the statement of claim and the management of Allahabad Bank ("party No. 1" in short) filed the written statement.

The case of the workman as presented in the statement of claim is that he came to be appointed as a clerk-cum-cashier on 01.03.1978 by the party No. 1 and was posted at Chandrapur Branch and he performed his duties with sincerity and honesty and he was transferred from one place to another and on 04.03.1979, he was posted at Nagpur Branch, Nagpur and on 25.05.2000 party No. 1 issued a charge sheet against him, on the allegation of his conducting misconduct and he submitted his reply to the charge sheet on 01.06.2000 and party No. 1 finding his reply to be unsatisfactory, decided to initiate the departmental enquiry against him and on 10.08.2000, he filed an application before the Regional Manager and the Disciplinary Authority stating therein that the enquiry initiated against him was violative of the provisions of clause 19.4 of the Bipartite settlement, on the ground that the Branch Manager had lodged a police report against him in respect of the alleged misconduct mentioned in the charge sheet dated 25.05.2000 and a criminal case was registered against him and the same was sub-judiced before the competent court and he requested to stay the departmental enquiry against him, but his application was rejected by party no. 1 on 12.10.2000 and the Enquiry Officer, by letter dated 22.12.2000 informed of fixing the enquiry to 15.01.2001 and again he was informed by the enquiry Officer by letter dated 22.02.2001 that the enquiry was fixed to 05.03.2001 and on 05.03.2001, he filed an application under clause 19.12 of chapter XIX of First Bipartite settlement for grant of permission to engage an advocate as his defence representative and also to stay the departmental enquiry till taking of a decision on his application and a copy of his

application was given to the Enquiry Officer and his said application was rejected by the party No. 1 on 08.03.2001 and a bare perusal of the proceedings of the departmental enquiry would reveal that though the Enquiry Officer had specifically directed the presenting officer to inform and supply the copies of the proceedings to him, at no point of time, the same was supplied to him and on 07.03.2001, the Enquiry Officer recorded the evidence of the witnesses in his absence and adjourned the enquiry to 09.03.2001 with a direction to send the copies of the proceedings to him by post and on 12.03.2001 at 4.30 P.M., he received the letter dated 08.03.2001 issued by the Enquiry Officer along with the copies of the departmental proceedings and after going through the said letter, he came to know that the enquiry was fixed to 09.03.2001 and on perusal of the envelop in which the said letter was sent revealed that actually the said letter and other papers were posted on 09.03.2001 at 14.09 hours and such facts revealed that the Enquiry Officer was bent upon to see that no opportunity should be given to him to participate in the enquiry and on 13.03.2001, he made an application to the enquiry Officer and requested him for granting him an opportunity to him to defend the charges, but to his best of knowledge, no order was passed on his said application and *vide* letter dated 24.05.2001, the order of his suspension came to be revoked and on 16.01.2002, a show cause notice was issued by party No. 1, calling upon him to explain as to why the punishment "dismissal without notice" should not be imposed upon him and *vide* letter dated 02.02.2002, he submitted his explanation to the said show cause notice, but without considering and applying its mind to the facts mentioned in his reply, the Regional Manager-cum-Disciplinary Authority *vide* order dated 27.02.2002, imposed the punishment of his dismissal from services of the Bank and being aggrieved by the said order, he preferred an appeal on 28.02.2002, before the Appellate Authority and the Appellate Authority also, without applying its mind, *vide* order dated 20.06.2002 rejected his appeal and upheld the order of dismissal dated 27.2.2002 and the order dated 27.02.2002 is bad in law and suffers from non application of mind by the party No. 1 and the departmental enquiry conducted against him was against the basic principles of natural justice and the Enquiry Officer acted as a puppet of the management representative and reasonable opportunities were not given to him to defend himself and opportunity to lead oral evidence was not given to him and as such, the enquiry was bad in law, null and void and the findings of the Enquiry Officer were based merely on conjunctures and surmises and the entire approach of the Enquiry Officer in conducting the enquiry was biased and such biased approach led the Enquiry Officer to submit an unwarranted, illegal and perverse report and the order impugned based on such perverse findings is liable to be quashed and set aside and the punishment imposed is shockingly disproportionate to the alleged misconduct.

It is also pleaded by the workman that documents filed by the management before the Enquiry Officer were not supplied to him and on that ground also, the enquiry is liable to be set aside and at the time of passing of the order of punishment, his past service record and the extenuating circumstances were not considered and as such, the impugned order of dismissal is liable to be quashed and set aside.

The workman had prayed for his reinstatement in service with continuity, full back wages and all other consequential benefits.

3. It is necessary to mention here that during the pendency of the reference, the workman died on 25.07.2013, so, his legal heirs, namely, Smt. Nutan (wife), Shri Amit and Shri Abhimanyu (Both sons) were substituted in his place.

4. The party No. 1 in the written statement, after denying all the adverse allegations made in the statement of claim, has mentioned *inter-alia* that the workman while working as a clerk-cum-cashier committed fraud intentionally and deliberately, by manipulating the records of the bank and as such, he was served with the charge sheet and the workman submitted his reply to the said charge sheet and as the reply of the workman was found not to be satisfactory, initiation of the departmental enquiry against him was ordered and the application dated 10.08.2000 filed by the workman was rejected by it on 12.10.2000, as the pendency of the criminal proceeding was not a bar to initiate the departmental enquiry against the workman and no illegality was committed by it in conducting the departmental enquiry and though the workman was given various opportunities, he did not appear in the departmental enquiry to defend himself and went on writing frivolous letters one after the other and in the departmental enquiry, the charges levelled against the workman were found to have been proved in accordance with law and the Disciplinary Authority after considering the materials on record of the enquiry, passed the order of punishment of dismissal of the workman from services and the appeal filed by the workman against the punishment imposed against him was rejected by the Appellate Authority on 02.06.2002, after due consideration and the departmental enquiry conducted against the workman was legal, proper and in accordance with the principles of natural justice and the workman was given all opportunities to defend himself in the enquiry, but he did not avail the same and the Enquiry Officer was not biased and the punishment is not shockingly disproportionate and the workman is not entitled to any relief.

5. As this is a case of dismissal of the workman from service, as a punishment in the departmental enquiry conducted against him, the fairness of the departmental enquiry was taken up for consideration as a preliminary issue and by order dated 21.11.2014, the departmental enquiry conducted against the workman was held to be

legal, proper and in accordance of the principles of natural justice.

6. At the time of argument, it was submitted by the learned advocate for the party No. 1 that by order dated 21.11.2014, the Tribunal has already held the departmental enquiry conducted against the workman to be legal, proper and in accordance with the principles of natural justice and the findings of the Enquiry Officer are based on the evidence on record and the same are not perversed and the punishment imposed against the workman is not shockingly disproportionate and there is no scope to interfere with the punishment and as the workman was not entitled to any relief, his legal heirs are not entitled to any relief.

7. It is to be mentioned than no argument was advanced on behalf of the legal heirs of the deceased workman, as on the date of argument, neither any of them nor anybody else including their advocate appeared to make the argument.

8. So, far the question of perversity of the findings of the enquiry officer and proportionality of the punishment are concerned, on perusal of the record and taking into consideration the submissions made by the learned advocate for the party No. 1, it is found that this is not a case of no evidence or that the findings of the enquiry officer are totally against the evidence on record. It is also found that the enquiry officer after assessing the evidence on the record of the enquiry in a precise manner and has arrived at the findings. The findings of the enquiry officer are not as such, which cannot be arrived at by any prudent man on the evidence on record. Hence, the findings of the enquiry officer cannot be said to be perverse.

So far the proportionality of the punishment is concerned, grave misconduct of committing fraud amounting to Rs. 1,75,000/- and causing of willful damage to the property of the Bank has been proved against the workman in a properly conducted departmental enquiry. It appears from record that the party No. 1 has lost confidence in the workman. So, the punishment of dismissal from services imposed against the workman cannot be said to be shockingly disproportionate to the grave misconduct proved against him. Hence, there is no scope to interfere with the order of punishment. Hence, it is ordered:—

## ORDER

The action of the management of Allahabad Bank, Nagpur (M.S.) in awarding the penalty of dismissal w.e.f. 04.03.2002 to Shri Prakash R. Kali, Clerk-cum-Cashier, Allahabad Bank, Civil Line Branch, Nagpur is justified. The workman concerned is not entitled to any relief. So, the legal heirs of the workman are also not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 6 मई, 2015

**का.आ. 953.**—ऑद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ोदा के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण/श्रम न्यायालय एरनाकुलम के पंचाट (संदर्भ सं. 20/2010)को प्रकाशित करती है जो केन्द्रीय सरकार को 05.05.2015 को प्राप्त हुआ था।

[सं. एल – 12012/26/2010-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 6th May, 2015

**S.O. 953.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 20/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 05/05/2015.

[No. L-12012/26/2010-IR(B-II)]

RAVIKUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

**Present:** Shri. D. Sreevallabhan, B.Sc., LL.B.  
Presiding Officer

(Tuesday the 30th day of September, 2014/8th Asvina,  
1936)

#### ID 20/2010

<b>Workman</b>	:	Ms. R. Sasikala W/o late Gireesh Kattilakuzhy Thadathrikathu Veedu Elangium PO Peringamala - 695563 By Adv. Shri R V Sujit Kumar
<b>Management</b>	:	The Asstt. General Manager, (Kerala Region) Bank of Baroda, Regional Office Vasudeva Buildings T D Road Ernakulam- 682011  By M/s B S Krishnan Associates

This case coming up for final bearing on 30.09.2014 and this Tribunal-cum-Labour Court on the same day passed the following:

#### AWARD

In exercise of the powers conferred by clause (d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India/Ministry of Labour *vide* its Order No. L-12012/26/2010-IR(B-II) dated 31.05.2010 referred the industrial dispute scheduled thereunder for adjudication to this tribunal.

2. The dispute is:

"1. Whether the domestic enquiry conducted into the charges levelled against Ms. R. Sasikala, Ex-Peon [Daftary] was proper and in accordance with the principles of natural justice?

2. Whether the quantum of punishment awarded to the workman was proportionate to the misconduct committed by workman?"

3. The workman was employed as a peon in the services of the management bank. While she was working at the Alamcode branch of the bank a chargesheet dated 09.01.2007 was issued to her levelling charges for three major misconducts and two minor misconducts.

4. The charges levelled against her are as follows:—

"(i) You have committed wilful insubordination or disobedience of any lawful and reasonable order of a superior which is a gross misconduct under clause 5(e) of Memorandum of Settlement dated 10.04.2002

(ii) You have committed breach of rules applicable to you thereby committed an act prejudicial to the interest of the Bank, which is a gross misconduct under clause 5(i) of Memorandum of Settlement dated 10.04.2002

(iii) You remained unauthorisedly absent without intimation continuously for a period exceeding 30 days which is a gross misconduct in terms of clause 5(p) of the Memorandum of Settlement dated 10.04.2002.

(iv) You neglected your work as an employee of the Bank which is a minor misconduct under clause 7(c) of the Memorandum of Settlement dated 10.04.2002

(v) You remained absent without leave, which is a minor misconduct under clause 7(a) of the Memorandum of Settlement dated 10.04.2002."

5. Mr. S Paulraj, Senior Branch Manager of the Varkala branch of the bank was appointed as the enquiry officer. After conducting enquiry he had submitted enquiry report dated 05.06.2007 to the disciplinary authority. All the five charges levelled against her were found to be proved by him. The disciplinary authority after furnishing a copy of the enquiry report to her and after considering her

submission imposed the penalty of 'Removal from Bank's service with superannuation benefits, *i.e.* Pension and/or PF Gratuity as would be due otherwise under the rules or regulations prevailing at the relevant time without disqualification from future employment'. Challenging the order of imposition of penalty she filed an appeal before the Appellate Authority. The appeal was dismissed confirming the findings and the punishment imposed on her. Hence she raised the industrial dispute which resulted in this reference.

6. Workman after appearance before this tribunal filed claim statement challenging the validity of the enquiry alleging that it was an ex-parte enquiry conducted in a biased, unfair and partisan manner without affording sufficient opportunity to her to participate in the enquiry. The penalty imposed on her was challenged alleging that it was imposed based on the perverse and erroneous findings of the enquiry officer entered into without any satisfactory evidence.

7. Management filed written statement denying the allegations in the claim statement as to the validity of the enquiry and the imposition of penalty. It is contended that the enquiry was properly conducted without any violation of the principles of natural justice after affording sufficient opportunity to the workman and that the findings were entered into by the enquiry officer after having a proper consideration of the evidence. It is because of the failure of the workman to participate in the enquiry in spite of granting sufficient opportunity the enquiry was to be conducted ex-parte. The enquiry officer has judiciously and independently analyzed the evidence and entered into the findings. The Punishment was imposed by the disciplinary authority after affording opportunity of being heard and also considering the previous instances of imposition of penalty on her for similar charges. The punishment imposed is in proportion to the proved misconducts as per the provisions of the Bipartite Settlement and it does not call for any interference by this tribunal. Appellate Authority also dismissed the appeal after considering her submissions and evaluating the entire evidence. The enquiry was conducted in a fair and judicious manner and the findings were entered into based on the evidence. The punishment imposed on her is legal, proper, proportionate and justified and hence she is not entitled to any relief.

8. The challenge as to the validity of the enquiry was considered as a preliminary issue. For that purpose MW1 was examined and the enquiry file was marked as Ext.M1. The enquiry was found to be valid by this tribunal as per the Preliminary Order dated 11.08.2014. After that the case was posted for final hearing but the workman remained absent without any representation on the subsequent posting dates. Hence the argument of the learned counsel for the management was heard.

9. The points for determination are:—

- (i) Whether the domestic enquiry conducted against the workman was proper and in accordance with the principles of natural justice?
- (ii) Whether the findings entered into against the workman in the enquiry call for any interference by this tribunal?
- (iii) Whether the punishment imposed on the workman is proportionate to the misconducts?
- (iv) Whether the workman is entitled to any relief?

10. Point No. (i):—As per the preliminary order dated 11.08.2014 it was found that the enquiry was conducted after affording reasonable opportunity to the workman without violating the principles of natural justice. As the enquiry was found to be valid as per the preliminary order no further probe is required with regard to that issue and the preliminary order will form part of this award.

11. Point Nos.(ii) & (iii):—As it is already found that the enquiry is valid it is not necessary to have a reappraisal of the entire evidence as in an appeal since the findings were arrived at by the enquiry officer based on the evidence adduced by the management in the enquiry. The evidence is to be looked into only for the limited purpose of considering the question as to the imposition of penalty.

12. Before considering the evidence it is to be pointed out that in disciplinary proceedings the standard of proof required is that of preponderance of probabilities and not proof beyond reasonable doubt line in a criminal case. If there are some relevant materials accepted by the disciplinary authority which reasonably support the conclusion that the workman is guilty it is not the function of the tribunal to review the materials. If the enquiry has been properly held the question of adequacy or reliability of evidence cannot be canvassed before this tribunal.

13. In the decision reported in BC Chathurvedi Vs. Union of India, (1995) 6 SCC 749 it was held:

"Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein apply to disciplinary proceeding. When the authority accepts the evidence and conclusion receives support there from, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The court/tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The court/tribunal may interfere, where the authority hold the proceedings against the delinquent officer in a manner inconsistent with the rules or natural justice or in violation of statutory rules prescribing the mode of enquiry or whether the conclusion or finding reached by the disciplinary authority is based on no evidence,

if the conclusion or findings be such as no reasonable person would have reached, the court/tribunal may interfere with the conclusion or finding and mould the relief so as to make it appropriate to the facts of the case".

14. The jurisdiction of the tribunal to interfere with disciplinary matters for punishment cannot be equated with an appellate jurisdiction and the tribunal cannot interfere with the findings of the enquiry officer or competent authority where they are not arbitrary or utterly perverse. If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority and if the penalty can be lawfully imposed and is imposed on the proved misconduct the tribunal has no power to substitute its own discretion for that of the authority.

15. In the decision reported in *The General Secretary, South Indian Cashew Factories Workers Union Vs. The Managing Director, Kerala State Cashew Development Corporation Ltd. & Ors.*, AIR-2006 SC 2208 it was held by the Apex Court that when enquiry was conducted fairly and properly in the absence of any allegations of victimization or malafides or unfair labour practice Labour Court has no power to interfere with the punishment imposed by the management.

16. It is also to be pointed out that in Chathurvedi's case (*Supra*) it was held:

"A review of the above legal position would establish that the disciplinary authority and in appeal the Appellate Authority being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal while exercising power of judicial review cannot normally substitute its own conclusion or penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directly, the disciplinary/Appellate Authority to reconsider the penalty imposed, or to shorten the litigation, it may by itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

17. Keeping in mind the above principles enunciated in those decisions it is to be considered whether there is any reason to interfere with the penalty imposed on the workman as it is already found that the enquiry was conducted in a fair and proper manner without violating the principles of

natural justice. There is no scope for any interference with the findings of the disciplinary authority unless it is perverse or based on no evidence.

18. Habitual absenteeism and unauthorized absence of the workman resulted in initiation of disciplinary proceedings against her by issuing charge sheet dated 09.01.2007. After receipt of the copy of the chargesheet on 13.01.2007 she had not cared to give any explanation. She did not participate in the enquiry in spite of granting reasonable opportunity by adjourning it to different dates and giving notice to her. The enquiry officer was constrained to proceed with the enquiry ex-parte and to enter the findings based on the evidence adduced by the management. The findings of the enquiry officer were accepted by the disciplinary authority after giving an opportunity to her to make her submission. In the reply dated 06.08.2007 given by her pursuant to the issuance of the notice of the proposed punishment it was expressed by her that it was because of the illness of her mother and her son she was unable to attend her duties. There was previous instance of absenteeism for which she was imposed with the penalty of bringing down the basic pay to lower stage by two stages. The enquiry officer after analyzing the evidence in the enquiry entered into the findings after assigning valid reasons. It is not necessary to have a detailed discussion of the evidence as there is no reason to hold that the findings are perverse. Conclusion reached by the enquiry officer cannot be said to be in such a nature as no reasonable person would have ever reached. On a careful scrutiny of the evidence adduced in the enquiry I do not find any reason to interfere with the findings of the enquiry officer which were accepted by the disciplinary authority and upheld by the appellate authority.

19. The penalty imposed by the disciplinary authority for the three misconducts is "removal from bank's service with superannuation benefits, i.e. pension and/or PF gratuity as would be otherwise due under the rules or regulations prevalent at the relevant time". Warning was given for the two minor misconducts.

20. The penalty imposed for the three gross misconducts as well as for the minor two misconducts cannot be said to be shockingly disproportionate to the proved misconduct against her especially in view of the previous penalty imposed on her as well as the other facts and circumstances. In the decision reported in *State of Rajasthan Vs. Mohammed Ayub Naz* 2006 (1) KLT 581 (SC) it was held that absenteeism from office for prolong period of time without prior permission the punishment of removal from service can be imposed. Therein it was held:

"In determining the quantum, role of administrative authority is primary and that of Court is secondary, confined to see if discretion exercised by the administrative authority caused excessive infringement of rights. The court/tribunal cannot

interfere with the findings of fact based on evidence and substitute its own independent findings and that where findings of disciplinary authority or appellate authority are based on some evidence Court/Tribunal cannot re-appreciate the evidence and substitute its own findings."

There is no reason to interfere with the findings as to the charges levelled against her and the imposition of penalty by the disciplinary authority which was confirmed by the appellate authority. Hence it can be held that the penalty imposed on the workman is not disproportionate to the misconducts and it does not call for any interference by this tribunal.

**21. Point No. (iv):—** In the result an award is passed holding that the domestic enquiry conducted against the workman as to the charges levelled against her was proper and in accordance with the principles of natural justice and the penalty imposed on her is not disproportionate to her misconducts. Hence she is not entitled to any relief.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 30th day of September, 2014.

D. SREEVALLABHAN, Presiding Officer

#### APPENDIX

Witness for the workman - NIL

Witness for the management

MW1 15.05.2013 Shri Paulraj

Exhibit for the workman - NIL

Exhibit for the management

M1 - Enquiry file.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

**Present:** Shri D. Sreevallabhan, B.Sc., LL.B., Presiding Officer

(Monday the 11th day of August, 2014/20th Shravana, 1936)

#### ID No. 20/2010

Workman	:	Ms. R.Sasikala W/o late Gireesh Kattilakuzhy Thadathrikathu Veedu Elangium PO Peringamala-695563 By Adv. Shri R.V. Sujit Kumar
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Management	:	The Assistant General Manager, (Kerala Region) Bank of Baroda Regional Office Vasudeva Buildings, T.D. Road Ernakulam-682011 By M/s. B.S. Krishnan Associates
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This case coming up for final hearing on 18.07.2014 and this Tribunal-cum-Labour court on 11.08.2014 passed the following:

#### Preliminary Order

This is a reference under Section (10(1)(d) of the Industrial Disputes Act, 1947 (14 of 1947).

2. The issue referred for adjudication is whether the domestic enquiry conducted into the charges levelled against the workman was proper and in accordance with the principles of natural justice and the quantum of punishment awarded was proportionate to the misconduct committed by her.

3. While she was working as peon at the Alancode Branch of the management bank a chargesheet dated 09.01.2007 was issued to her. The charges levelled against her are as follows:—

- "i. You have committed willful insubordination or disobedience of any lawful and reasonable order of a superior which is a gross misconduct under clause 5(e) of Memorandum of Settlement dated 10.04.2002.
- ii. You have committed breach of rules applicable to you thereby committed an act prejudicial to the interest of the Bank, which is a gross misconduct under clause 5(j) of Memorandum of Settlement dated 10.04.2002.
- iii. You remained unauthorisedly absent without intimation continuously for a period exceeding 30 days which is a gross misconduct in terms of clause 5(p) of the Memorandum of Settlement dated 10.04.2002.
- iv. You neglected your work as an employee of the Bank which is a minor misconduct under clause 7(c) of the Memorandum of Settlement dated 10.04.2002.
- v. You remained absent without leave, which is a minor misconduct under clause 7(a) of the Memorandum of Settlement dated 10.04.2002."

4. Mr. S. Paulraj, Senior Branch Manager, Varkala Branch was appointed as Enquiry Officer to conduct enquiry as to the charges levelled against her. After conducting enquiry he had submitted enquiry report dated 05.06.2007 to the

disciplinary authority after finding that all the charges levelled against her are proved. The disciplinary authority furnished a copy of the enquiry report to her and after considering her submissions she was imposed with the punishment of 'removal from Bank's service with superannuation benefits' as per order dated 10.08.2007. The appeal filed by her before the Appellate Authority was dismissed confirming the punishment imposed on her. Hence she raise the industrial dispute which resulted in this reference.

5. Challenge as to the validity of the enquiry is made in the claim statement by making the allegations that the chargesheet was issued without issuing show cause notice and affording sufficient opportunity to her to participate in the enquiry violating the principles of natural justice. It was an ex-parte enquiry conducted in a biased, unfair and partisan manner. The punishment was imposed on the basis of allegations, charges and clauses of misconducts in the Bipartite Settlements which are patently vague and lacking in material particulars. The workman was deprived of clear understanding of the allegations levelled against her. The findings were entered into without any satisfactory evidence. The punishment was imposed illegally based on perverse and erroneous findings. No act of gross misconduct has been proved against her for the imposition of the penalty of 'removal from services with superannuation benefits'. The entire disciplinary proceedings was initiated and proceeded with on a pre-concocted assumption that the workman had committed the alleged misconducts and charges and hence it is liable to be set aside.

6. In the written statement filed by the management all the allegation made in the claim statement challenging the validity of the enquiry and the imposition of penalty are denied and it is contended that the enquiry was properly conducted without any violation of the principles of natural justice. The enquiry officer issued notice to the chargesheeted employee to attend the preliminary hearing on 15.03.2007. After the receipt of the notice she did not turn up and hence the enquiry was postponed to 09.04.2007. Notice was issued to her to attend the hearing on that day. On that day also she did not appear and yet another opportunity was given to her to attend the hearing by posting it to 30.04.2007. She did not turn up on that day also and hence the enquiry officer after analyzing the evidence submitted from the said of the management arrived at his findings. She was given ample opportunity to participate in the enquiry. She had deliberately avoided the opportunity to present her case. It is after affording sufficient opportunity to her the enquiry officer entered into the findings. It is baseless to allege that the enquiry officer was biased and has violated the principles of natural justice by denying reasonable opportunity to defend her case. The enquiry was conducted in a judicious and fair manner. It was because of her fault the enquiry had to be

conducted ex-parte. The charges levelled against her are clear and there is no ambiguity or vagueness. The enquiry officer has judiciously and independently analyzed the evidence and entered into the findings. The disciplinary authority after service copy of the enquiry report and getting her submissions imposed the penalty. The punishment imposed is proportion to the proved misconduct. The disciplinary action taken against her is not vitiated in any manner. The Appellate Authority, after considering her submissions, all the evidence and related documents, found that a fair and proper enquiry was conducted against her and upheld the decision of the disciplinary authority. The punishment was imposed on her as per the provisions of the Bipartite Settlement after conducting a legal and proper enquiry.

7. As the validity of the enquiry is under challenge it is being heard after treating it as a preliminary issue.

8. For the purpose of deciding that issue the enquiry officer was examined as MW1 and the enquiry file was marked as Ext. M1.

9. Now it is only to be considered whether the enquiry was conducted in a fair and proper manner without violating the principles of natural justice by affording reasonable opportunity to the workman. The allegation in the claim statement that show cause notice was not issued before issuing the chargesheet does not deserve any serious consideration as it is not mandatory to issue a show cause notice before issuing chargesheet. Failure to issue show cause notice will not in any way affect the validity of the enquiry.

10. Out of the five charges in the chargesheet three are for gross misconduct and the remaining two are for minor misconducts. The charges are specific and there is no meaning in saying that there is vagueness in the charges. After receipt of the chargesheet no objection is seen raised by her as to the vagueness of any of the charges.

11. She was afforded three opportunities to participate in the enquiry by the enquiry officer. Initially the enquiry was posted to 15.03.2007. As she failed to attend on that day the enquiry was posted to 09.04.2007. She did not turn up on that day also and hence the enquiry was again posted to 30.04.2007. On all the three occasions prior notice was issued to her informing the date of enquiry. It is because of her failure to participate in the enquiry the enquiry officer had to conclude and arrive at the findings based on the evidence submitted by the presenting officer. There is no reason to hold that reasonable opportunity was not afforded to her to participate in the enquiry.

12. The enquiry officer when examined as MW1 has stated that sufficient opportunity was given to the workman to participate in the enquiry and it is only afterwards it was proceeded ex-parte. He was not cross examined by the

workman. Workman has not made any challenge with regard to the validity of the enquiry by cross examining him. Before this tribunal also she was continuously absenting herself without any representation on several posting dates and even without availing the opportunity to cross examine him.

13. There is nothing to suggest that there was any bias for the enquiry officer. It was because of her failure to participate in the enquiry he had proceeded with ex parte. It is based on the documentary evidence submitted by the presenting officer the findings were entered into by him.

14. Disciplinary authority imposed the punishment only after serving a copy of the enquiry report to her. In the reply submitted by her there is no challenge as to the validity of the enquiry and no bias is attributed against the enquiry officer. The reasons for her chronic absenteeism is stated to be the illness of her mother and son. There is also the undertaking that she would not avail leave without permission of the bank and the misconducts will not be repeated. Nothing is stated about the vagueness in the chargesheet and the violation of principles of natural justice.

15. The enquiry is not liable to be set aside for the mere reason that it was an ex parte enquiry. It is only to be looked into whether reasonable opportunity was afforded to the workman to participate in the enquiry. Here in this case it is after affording three opportunities the enquiry was closed. There is no reasons to hold that the enquiry is not valid. There is no irregularity or impropriety in conducting the enquiry and the imposition of penalty. Hence I find that the enquiry is valid.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 11th day of August, 2014.

D. SREEVALLABHAN, Presiding Officer

#### APPENDIX

**Witnesses for the Workman** Nil

**Witnesses for the Management**

MW1-15.05.2013 Shri S. Paulraj

**Exhibit for the Workman** Nil

**Exhibit for the Management**

M1 - Enquiry file

नई दिल्ली, 6 मई, 2015

**का.आ. 954.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कानडला पत्तन न्यास के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम

न्यायालय अहमदाबाद के पंचाट (101/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.05.2015 को प्राप्त हुआ था।

[सं: एल-37011/4/2011-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 6th May, 2015

**S.O. 954.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 101/2012) of the Central Government Industrial-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Kanda Port Trust and their workmen, received by the Central Government on 05.05.2015.

[No. L-37011/4/2011-IR(B-II)]  
RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

##### Present :

Binay Kumar Sinha,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad, dated 7th August, 2014

##### Reference: (CGITA) No. 101/2012

The Chairman,  
Kandla Port Trust,  
Post Box No. 50,  
Gandhidham, Kutch (Gujarat) .....First Party  
and

Their Workman  
Through the President  
Kandla Port Karmachari Sangh,  
TCX-5-94,  
Gandhidham,  
Kutch-370210 .....Second Party

For the 1st party: Shri K. V. Gadhia, Advocate  
Shri M.K. Patel, Advocate

For the Second Party: None

#### AWARD

The Central Government/Ministry of Labour, New Delhi vide order No. L-37011/4/2011-IR(B-II) dated 23.05.2012 referred the dispute for adjudication in respect of the matters specified in the schedule:

#### SCHEDULE

"Whether the M/s ABG Kandla Container Terminal Ltd. working as Container Terminal Operator under

agreement with Kandla Port on Berth No.11 and 12 is covered under stevedoring? 2. If so, whether the action of non-booking of Dock/shore workers/ winchman at berth No. 11 and handled by M/s. ABG Kandla Container Terminal Ltd. is legal and justified? What relief the concerned workmen are entitled to?"

2. Inspite of service of notice the 2nd party (union) failed to appear and file S/c whereas the 1st party responded to notice making appearance through lawyer by executing Vakaltanama (Ext. 5). Several adjournment were given for filing S/c but the 2nd party appears to have lost interest. So, the 1st part of terms of reference is answered in negative and the 2nd part of terms of reference is answered in affirmative. Accordingly it is held that M/s. ABG Kandla Container Terminal Ltd. working as Container Terminal Operator under agreement with Kandla Port on berth No. 11 and 12 is not covered under agreement with Kandla Port on berth No. 11 and 12 is not covered under stevedoring and so, the action of non-booking of Dock/shore workers/ Winchman at berth No. 11 and 12 handled by M/s. ABG Kandla Container terminal Ltd. is legal and justified. So the concern workman are not entitled to any relief.

Accordingly the reference is dismissed. No order of cost.

Let a copy of the award be sent for publication to the appropriate Government.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 6 मई, 2015

**का.आ. 955.—**औद्योगिकी विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अरुणाकुलम के पंचाट (28/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/05/2015 को प्राप्त हुआ था।

[सं. एल-12012/50/2010-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 6th May, 2015

**S.O. 955.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.No. 28/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the Industrial dispute between the management of Union Bank of India and their workmen, received by the Central Government on 05/05/2015.

[No. L-12012/50/2010-IR(B-II)]

RAVI KUMAR, Desk Officer

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

**Present :** Shri D Shreevallabhan, B.Sc., L.L.B., Presiding Officer.

(Monday the 02nd of February, 2015/13th Magha, 1936)

#### ID 28/2010

Workman	:	Shri Manoj V S/o. Shri Velayudhan Mattukkad House Copalmannam PO Palghat-678702 By M/s. H B Shenoy Associates
Management	:	The Deputy General Manager Union Bank of India Nodal Regional Office Ernakulam By Adv. Shri K S Ajayagosh

This case coming up for final hearing on 02.02.2015 and this Tribunal-cum-Labour Court on the same day passed the following:

#### AWARD

In exercise of the powers conferred by clause(d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India/Ministry of Labour by its Order No. L-12012/50/2010-IR(B-II) dated 07.10.2010 referred the industrial dispute scheduled thereunder for adjudication to this tribunal.

2. The dispute is:

"Whether the action of the management of Union Bank of India in not considering the candidature of Shri Manoj for regular appointment and subsequent action in terminating him from its services without adhering to the provisions of the ID Act is fair and justifiable? What relief the workman is entitled to?"

3. Workman after appearance before this tribunal filed claim statement. The allegations therein, in brief, are that he was employed as a part time sweeper of the management bank in August, 1997 and afterwards he was in continuous service without any break until termination of his service on 27.11.2005. He was employed against a regular and permanent vacancy of part time sweeper for the discharge of the duties of a regular and permanent part time sweeper. But he was discharging the duties of a regular and permanent peon and at times that of a regular and permanent clerk. Management had not extended any of the privileges or benefits commensurate with that of a permanent part time sweeper employed in the bank. No additional

remuneration or any compensation was given for the discharge of the duties as a peon or clerk. He was given privileges and benefits much lower than that of a permanent part time sweeper. He was illegally terminated from service without complying with the mandatory procedure provided under Section 25F of the Industrial Disputes Act and in violation of the provisions in paragraphs 522 to 524 of the Shastri Award. The retrenchment of his service is bad also on the count that persons junior to him were retained in service by the management in violation of Section 25G of the ID Act and also paragraph 507 of Shastri Award. Immediately after termination of his service fresh and new hands were taken in service without affording him opportunity of re-employment in violation of Section 25H of the Industrial Disputes Act, clause 20, 12 of the First Bipartite Settlement dated 19.10.1966 and paragraph 493 of Shastri Award. He was treated by the management as a temporary workman against permanent vacancy just to deprive him of the status and privileges of a permanent workman. Management was employing sweepers and peons as temporaries against vacancies and replacing them by new hands. It is an unfair labour practice prohibited under Section 25T of the industrial Disputes Act. It is in violation of paragraphs 20.7 and 20.8 of the First Bipartite Settlement and also paragraphs 495 and 522 of Shastri Award. Management is not at all justified in retrenching the service of the workman and hence he is entitled to be regularized and to be afforded regular appointment in the permanent services of the management bank. Hence to prays for his reinstatement with continuity of service, full back wages and other attendant benefits as a permanent part time sweeper.

4. Management filed written statement contending that the workman was not employed through selection process and he is not a workman under Section 2(s) of the industrial Disputes Act. He was not employed by the management bank against a regular/sanctioned/permanent post. Hence there is no question of retrenchment as envisaged under Section 25F of the Industrial Disputes Act and paragraphs 507, 522 to 524 of the Shastri Award. He is not entitled for reinstatement or for regularization as claimed by him.

5. Workman filed replication denying the contentions in the written statement and reaffirming the allegations in the claim statement.

6. At the time when the case stood posted for evidence, he was continuously absenting himself and he was set ex parte on 11.07.2013 and an award was passed on 12.07.2013. Afterwards the workman filed IA 76/2013 to set aside the ex parte award and the same was allowed as per order dated 23.10.2014. After setting aside the ex parte award the case was posted for evidence. Even after that he remained absent without any representation and hence set ex parte. Management did not adduce any evidence representing

that the burden of proof lies on the workman to prove his case in view of the contentions raised in the written statement.

7. Since it is contended by the management that he is not a workman coming within the definition of Section 2(s) of the Industrial Disputes Act, 1947 and hence there is no question of retrenchment the initial burden is on him to prove his case by adducing evidence. As he did not adduce any evidence to discharge the initial burden case upon him it cannot be held that he is a workman as defined under Section 2(s) of the Industrial Disputes Act and his service was illegally terminated by the management in violation of the statutory procedure provided under Section 25F of the Industrial Disputes Act. Hence it can only be held that the action of the management in not considering the candidature of the workman for regular appointment and the termination of his service is legal and justifiable.

8. In the result an award is passed finding that the action of the management terminating the services of the workman considering his candidature for regular appointment is fair and justifiable and hence he is not entitled to any relief.

The Award will come into force one month after its publication in the Official Gazette.

Dicated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 02nd day of February, 2015.

D. SREEVALLABHAN, Presiding Officer

#### APPENDIX-NIL

नई दिल्ली, 6 मई, 2015

**का.आ. 956.—**औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय अरुनाकुलम के पंचाट (03/2010)को प्रकाशित करती है जो केन्द्रीय सरकार को 05.05.2015 को प्राप्त हुआ था।

[सं. एल-12011/80/2009-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 6th May, 2015

**S.O. 956.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 3/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 05/05/2015.

[No. L-12011/80/2009-IR (B-II)]

RAVI KUMAR, Desk Officer

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri. D. Sreevallabhan, B.Sc., LL.B, Presiding Officer

(Thursday the 29th day of January, 2015/09th Magha, 1936)

#### ID 3/2010

Workman	: <p>Shri K V Manikandan 183, Arunoottimangalam Nagar Mangad PO Kollam Kerala By Advs. Shri Manoj R Nair Shri N S Raveendranathan</p>
Management	: <p>The Regional Manager Central Bank of India Regional Office Gopal Building, Thiyvila Road Thiruvananthapuram—695001 Kerala By M/s. Peter &amp; Karunakar</p>

This case coming up for final hearing on 13.01.2015 and this Tribunal-cum-Labour Court on 29.01.2015 passed the following:

#### AWARD

In exercise of the powers conferred by clause (d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India/Ministry of Labour vide its Order No. L-12011/80/2009-IR(B-II) dated 23.11.2009 referred the industrial dispute scheduled thereunder for adjudication to this tribunal.

2. The dispute is:

"Whether the domestic enquiry against Shri K V Manikandan, Ex-Head Cashier, Central Bank of India, Kulathupuzha Branch was conducted in accordance with the principles of natural justice by affording fair opportunities to the workman to defend himself against the charges leveled against him and whether the findings of the Enquiry Officer was justified? To what relief the workman was entitled to?"

3. The workman while working as Head Cashier-II in the Kulathupuzha branch of the management bank, he was issued with a memo of charges dated 06.06.2006 on 15.06.2006. The charges under the seven heads in the chargesheet are:

"1. On 31.01.2006, one Smt. Kumari tendered `2,500/- to Mr.K V Manikandan for remittance into her gold

loan account (P)36/1101. Mr Manikandan who was sitting in the Receipts and Payments of Cash counter on that day, accepted the cash from Smt. Kumari and acknowledged receipt of the amount on the reverse of the gold loan card. Instead of accounting the amount as receipt on that day, Mr. Manikandan took the money for himself. Thus Mr. Manikandan defalcated ` 2,500/-.

2. On 04.11.2005, one Mr. Ajit Kumar gave ` 1,150/- to Mr. Manikandan who was sitting in cash receipt/payment counter to be remitted into his loan account No.350203 with the branch. Mr. Manikandan accepted the cash but did not remit it into loan account No.350203 but took the money for himself. But Mr. Manikandan made an entry in the loan pass book for having received the amount. Thus Mr. Manikandan defalcated ` 1,150/-.

3. On 03.03.2006, one Smt. Shafia Basheer gave ` 10,000/- to Mr. Manikandan who was sitting in Cash Receipt and Payment counter to be remitted into her gold loan account No.(P)36/382 with the branch. The remittance was scrolled by Mr. V P Muralidharan and verified by C L Kochappan, Deputy Manager. Mr. Manikandan received the cash and took ` 10,000/- for himself. Mr. Manikandan cancelled the scroll entry from the system, to prevent the mischief to come into light. Mr. Manikandan however acknowledged receipt of cash by making an entry on the reverse of the gold loan card. Thus Mr. Manikandan defalcated ` 10,000/-.

4. On 27.12.2005 one Mr. Abdul Rasheed Vaidyar gave a sum of ` 3,000/- to Mr. K V Manikandan who was sitting in the cash counter to be remitted to his gold loan account no 36/1318 with the branch. Mr. Manikandan received the cash but without remitting the amount into the loan account took the money for himself. Mr. Manikandan made an entry in the gold loan card, under his signature, for having received the cash. Thus Mr. Manikandan defalcated ` 3,000/-.

5. On 18.03.2006, one Smt Geetha, Secretary of SHG Reshma Kudumbashree handed over ` 11,250/- (wrongly mentioned as ` 11,150/- in our Memo dated 04.05.2006) to Mr. Manikandan for remitting to their Term Loan account No.350098. Mr. Manikandan who was attending the cash counter received cash and acknowledged receipt of the amount by making an entry in their loan pass book under his signature but pocketed the amount of ` 11,250/- for himself without crediting the same in the loan account. Thus Mr. Manikandan defalcated ` 11,250/-

6. Mr. Manikandan issued cheques in his savings account No.13740 with Kulathupuzha branch, cheque No.213577 dated 27.03.2006 to M/s. LIC of India, Kollam for ` 3,105/-, which was presented by UTI Bank Ltd, Kollam and had to be returned for want of funds on 04.04.2006.

7. Mr. Manikandan issued cheque No.213575 dated 11.03.2006 for ` 2,350/- to CBIEU(K) A/c Conference Fund.

The said cheque which was received for collection from Trivandrum branch under FSCM No.110155 dated 14.03.2006 was returned unpaid on 28.03.2006 for want of funds."

4. He was charged with gross misconduct under clause 5(j) of the Memorandum of Settlement on Disciplinary Action Procedure for workmen dated 10.04.2002. Since the charges are about gross misconduct management appointed Mr. Somasundaram, the Branch Manager, Kalanjoor branch as the enquiry officer. After enquiry he had submitted his findings to the disciplinary authority on 10.10.2006. After serving copy of the enquiry report to the workman and getting his comments and also after issuing notice with regard to the proposed punishment the disciplinary authority after having a personal hearing imposed the punishment of "dismissal without notice". The appeal filed by the workman before the appellate authority was disposed of on 01.07.2008 after finding that there is no reason to disagree with the findings of the disciplinary authority and the punishment awarded to him. Hence he raised this industrial dispute which resulted in this reference.

5. Workman after his appearance before this tribunal filed claim statement challenging the validity of the enquiry, findings of the enquiry officer and the disciplinary authority as well as the penalty imposed on him. The validity of the enquiry is challenged on the ground that the enquiry officer turned down the request of the workman to get himself examined as a witness in the enquiry. The findings of the enquiry officer and the disciplinary authority were challenged for the reason of denial of opportunity to adduce sufficient evidence by the workman to prove his case.

6. Management filed written statement contending that the enquiry was fairly and properly conducted by the enquiry officer after affording sufficient opportunity to the workman to adduce evidence. The punishment was imposed by the disciplinary authority after serving a copy of the enquiry report and also after having a personal hearing. The punishment imposed on the workman commensurates with the gravity of the misconduct and is legally sustainable. The workman while dealing with public money was to act with absolute integrity and honesty expected from a bank employee. There is no reason to interfere with the penalty imposed on him and hence he is not entitled to any relief.

7. Workman filed rejoinder denying the contentions in the written statement and reiterating the allegations in the claim statement as to the validity of the enquiry and the findings of the enquiry officer.

8. Challenge as to the validity of the enquiry was considered treating it as a preliminary issue. For that purpose one witness from the side of the management was examined as MW I and the enquiry file was got marked as

Ext.M1. The enquiry was found to be invalid by this tribunal as per the preliminary order dated 29.12.2011. Since the enquiry was found to be unsustainable opportunity was afforded to the management as well as the workman to adduce evidence. From the side of the management one more witness was examined as MW2 and Exts.M 1(a) to M 1(x) and M2 to M11 were marked. From the side of the workman he was examined as WW1 and Exts.W1 to W8 were marked. After that the arguments for both sides were heard.

9. The points for determination are:

- (i) Whether the management has succeeded in proving all or any of the charges levelled against the workman?
- (ii) Whether the punishment imposed on the workman by the management calls for any interference by this tribunal?
- (iii) Whether the workman is entitled to any relief?

10. **Point No.(i):**— Except charge No.5 all the other charges were found to have been proved by the enquiry officer based on the evidence adduced before him and the findings as such were accepted by the disciplinary authority as well as the appellate authority. It is only for the reason that there was denial of opportunity to the workman to adduce evidence due to the refusal of the request made by him for examining him as a witness the enquiry was held to be invalid by this tribunal. Since the enquiry was found to have been unsustainable it is necessary to have a detailed consideration of the evidence adduced before this tribunal to find out whether the charges can be held to be proved against the workman. Each of the seven charges levelled against him can be considered independently in order to have separate findings on those charges.

11. The first charge is as to the embezzlement of an amount of ` 2,500/- received by the workman from one Smt Kumari on 31.01.2006 for crediting it to her gold loan A/c No.(P)36/1101 without making credit of it in that account and making entries in the account of the management bank. The workman would admit that he had received an amount of ` 2,500/- from Smt Kumari on 31.01.2006 and entry was made by him with regard to the receipt of that amount on the reverse side of Ext.M7 gold loan card relating to that account. He would also admit the signature in Ext.M7 relating to that entry as that of him. That amount was not credited or accounted and the same is evidenced by the scroll marked as Ext.M1(c) and the copy of the statement of account of that gold loan marked as Ext.M1(x). No explanation was offered by him for not accounting it in the claim statement or by filing a reply to the memo of charges. In the proof affidavit he would admit the receipt of ` 2,500/- from Smt. Kumari on 31.01.2006 as part payment. But it is averred that the same was adjusted towards another loan

availed by her without scoring the entry in Ext.M7. It is for the first time such a case was put forward by him.

12. By placing reliance on Ext.M9 learned counsel for the workman has argued that the amount of ` 2,500/-was adjusted towards another loan with A/c No.3601629. There is no reliable evidence in this case to prove that there was any such adjustment of that amount after making entry of its receipt in Ext.M7. No valid explanation is offered for the failure to score off the entry in Ext.M7 as to the receipt of that amount if there was any such adjustment. Learned counsel for the workman has submitted that it is because of the negligence of the workman it was not being scored. Such an explanation cannot in any way be accepted about such a money transaction with the bank. The workman when examined as WW1 has stated during his cross examination that he came to know that the amount was not accounted only after the receipt of the memo calling upon his explanation. It is not consistent with the case put forward by him in the proof affidavit. During the cross examination of WW1 it was expressly admitted by him that the entry in Ext.M7 as to the receipt of ` 2,500/- on 31.01.2006 was made by him and it was not accounted. Hence the burden is on him to disprove the case that it was not appropriated by him. It is not proved by adducing any reliable evidence. The customer Smt Kumari could have been examined to prove his case as to the adjustment and return of the credit voucher. From Ext.M2 complaint made by Smt Kumari to the bank it can be seen that the amount of ` 2,500/- was given back by him on 28.03.2006. It is true that Kumari Johnny who made the complaint was not examined as a witness in this case. Learned counsel for the workman has submitted that there is difference in the name in Ext.M7 and Ext.M2. The name is given as Kumari in Ext.M7. But from Ext.M1(x) it can be seen that her name is given as Kumari Johnny in the statement of accounts relating to that gold loan. The account number in Ext.M7 as well as in Ext.M1(x) is the same. Without any valid explanation for not scoring the entry in Ext.M7 as to the receipt of ` 2,500/- on 31.01.2006 and not for accounting it, it can very well be held that the amount of ` 2,500/- received from her was appropriated by the workman without making entries in the accounts of the bank. Hence it can be reasonably held that the management has succeeded in proving the first charge levelled against him.

13. In order to prove the second charge about the receipt of ` 1,150/-by the workman on 04.11.2005 from the customer Mr. Ajit Kumar for remittance towards his loan account after making entry in the passbook and appropriating the same without accounting it management relies on Exts.M1(d) to M1(f) and deposition of MW2. Ext.M1(d) is the copy of the passbook wherein entry is made as to the receipt of ` 1,150/- on 04.11.2005. Ext.M1(e) is the copy of the statement of accounts and Ext.M1(f) is the scroll of 04.11.2005 and those were produced to prove that the amount received from that customer was not credited by

making entries in the account of the management bank. Workman would deny the receipt of the amount and making of the relevant entry in Ext.M1(d). The initial in that entry was denied by him. There is no reliable evidence in this case to prove that the entry was made by him with his initial. Except the admission of WW1 during his cross examination that he was the cashier on 04.11.2005 there is no other evidence to prove that the entry was made by him. Ext.M5 is said to be the copy of the complaint given by the customer on 05.04.2006 about the non-accounting of the amount of ` 1,150/- paid by him on 04.11.2005.

14. The initial in Ext.M1(d) is not similar to the initials in Exts.W1 and M11 muster rolls admitted to be that of the workman. There is similarity in hand writing in the entries on different dates in Ext.M1(d) but it cannot be definitely said that the entry was made by him without any supporting evidence. The workman was admitted to be the cashier on that day but that by itself is not sufficient to say that the entry was made by him. There must be some independent evidence to prove that the entry was made by the workman after receipt of the amount from Mr. Ajikumar since he would deny the initial which appears to have no resemblance with the admitted initials. Mr. Ajikumar who is said to have made Ext.M5 complaint was not examined as a witness in this case to prove the receipt of the amount and making of the entry by the workman. In Ext.M5 complaint it is not stated that it is the workman who had received ` 1,150/- from him on 04.11.2005. What is stated is that an amount of ` 1,150/- was received by the cashier and made entry in the passbook. It cannot be conclusively held that it is the workman who received ` 1,150/- from that customer and made entry in Ext.M1(d) passbook. Hence it cannot be held that charge No.2 is proved.

15. The third charge as to them is appropriation of an amount of ` 10,000/- remitted by Smt Shafia Basheer towards her gold loan account on 03.03.2006. The workman would admit during his cross examination that he had received ` 10,000/- from her and an entry was made with regard to the same in the gold loan card marked as Ext.M1(g). There is no entry as to that amount in the statement of account in respect of that loan and in the scroll of that day which were respectively marked as M1(i) and M1(j). According to the management the amount was appropriated after cancelling the credit voucher marked as Ext.M1(h) and cancelling the entry in the scroll of that day. The cancellation of entry in the scroll is proved through Ext.W2. The cancellation is admitted to have been made by the workman. As the entry in Ext.M1(g) gold loan card with his signature is not seen scored it cannot be said that the amount was not received by him. The case put forward by the workman in the proof affidavit that at the time of counting there was a shortage of ` 500/- and hence returned the cash to her cannot be believed even for a single moment in view of the other evidence in this case. There is no independent evidence in this case to prove that the amount was returned to her. If it

was returned as stated by him the entry in the gold loan card was to be cancelled. It cannot easily be said that he made the entry before counting the currency notes received from her. Since the cancellation was made by the workman himself in the scroll it can be seen that the same was done by him for the appropriation of the amount received from her. There is ample evidence in this case to prove that the amount remitted by her was not accounted and was appropriated by the workman after cancelling the scroll entry. Hence it can very well be held that charge No.3 is proved.

16. In order to prove charge No.4 as to the unaccounting of ` 3,000/- received by the workman from the customer Mr. Abdul Rasheed Vaidhyar on 27.12.2005 management relies on Ext.M8, Ext.M1(1) and Ext.M1(m) and the admission of WW1 during his cross examination as to the entry made in Ext.M8 as to the receipt of ` 3,000/- from that customer. Ext.M8 is the gold loan card relating to the loan availed by that customer from the management bank. The entry as to the receipt of amount of ` 3,000/- is admitted to have been made by the workman in Ext.M8. It was not accounted and the same is evidenced by Ext.M1(l), the copy of the statement of accounts and Ext.M1(m), the copy of the scroll as to the daily transactions on 27.12.2005. WW1 would expressly admit that the amount was not accounted by him. The case put forward by him in his chief affidavit is that the entry was made by him before counting the cash and at the time of counting it was found that there was ashortage of ` 200/- and hence he returned the cash, gold loan card and the voucher to the customer. It was admitted by him during his cross examination that such a case was put forward only at the time of filing the proof affidavit and not earlier on any occasion. It cannot in any way be believed that the entry was made without counting the cash and the gold loan card was returned with the entry without scoring it when the cash was said to have been returned to the customer on seeing that there was shortage of ` 200/-. As he would admit the entry in Ext.M8 with his signature as well as the receipt of cash from the customer the burden is on him to prove that the cash was returned to the customer. There is no reliable evidence in this case to prove the same. It cannot easily be accepted merely based on the evidence of WW1. There is no reason to believe that the cash was returned without scoring the entry in Ext.M8. Such an instance is not to happen when a head cashier receives cash from a customer. The case put forward by the workman at the time of filing proof affidavit and not before that is highly improbable and unacceptable. Hence it can reasonably be held that the management has succeeded in proving charge No.4.

17. There is no convincing evidence in this case to prove charge No.5 as to the receipt of ` 11,250/- on 18.03.2006 from Smt. Geetha for crediting it towards the loan of Reshma Kudumbashree and defalcation of that amount by the workman without accounting it by making entries in the

account of the management bank. Ext.M1(n) is the copy of the passbook relating to the loan in respect of M/s. Reshma Kudumbashree wherein the entry is stated to have been made by the workman as to the receipt of that amount. Ext.M1(o), the copy of statement of account of that loan and Ext.M1(p), the copy of the scroll of 18.03.2006 were produced to prove that it was not accounted by the workman by making entries in the account of the management bank. Workman would deny the making of the entry in Ext.M1(n) passbook and the initial in it. The initial has not got resemblance with the admitted initials in Ext.M11. Except the admission of the workman that he was the head cashier there is no other evidence to prove that the entry was made by him. In such circumstance it was necessary to examine Smt. Geetha as a witness to prove the same. Ext.M3 complaint stated to have been made by her bears no date. The contents of the complaint are also not proved through her examination. As the workman would deny the making of the entry as well as the initial in it management has to adduce satisfactory evidence to prove the receipt of the amount by adducing independent evidence. There is no reliable evidence in this case to prove that he had received the said amount as stated in the charge. Hence it cannot be held that charge No.5 is proved.

18. Charge Nos.6 & 7 are with regard to dishonor of two cheques issued by the workman for want of funds. One cheque dated 27.03.2006 was issued to M/s. LIC of India, Kollam for ` 3,105/- and the other cheque dated 11.03.2006 was issued to CBIEU(K) for ` 2,350/. The issuance of those two cheques from his account in the Kulathupuzha branch of the management bank as well as the dishonor of the same is not disputed by the workman. According to him those cheques were issued in his personal capacity as post dated cheques and the same were happened to be dishonoured due to the subsequent events which made it unnecessary to make payments. Whatever it be it cannot be said that it will amount to a misconduct under clause 5(j) of the Bipartite Settlement. Those transactions bring about only the relationship of banker and customer. It is not a case of excessive borrowing making it as a misconduct attracting clause 5(j) of that Bipartite Settlement. There is nothing on record to satisfy that the misconduct under Section 5(j) would include the dishonor of the cheques issued in his personal capacity.

19. From the foregoing discussion it is found that charge Nos.1, 3 and 4 are proved and charge Nos.2 and 5 are not proved. Charge Nos.6 and 7 even if found to be proved cannot be termed as misconduct inviting penalty under clause 5(j) of the Bipartite Settlement.

**20. Point No.( ii):—** Disciplinary authority imposed the penalty of "dismissal without notice" as per clause 6(a) of Memorandum of Settlement *vide* Disciplinary Action Procedure dated 10.04.2002 and it was confirmed by the Appellate Authority. Now it is to be considered whether it

is shockingly disproportionate to the proved misconducts. In the decision reported in State Bank of India and another Vs. Bela Bagchi and Others (2005) 7 SCC 435 it was held by the Apex Court that the charge with regard to receipt of money from an account holder for depositing in his saving bank account and making fraudulent or fictitious credit entry in the passbook by the employee of the bank is serious in nature and the contention that no loss was caused to the bank is no defence. Therein it was also held:

*"A bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. Even acting beyond one's authority is a misconduct. The charges against the employee were not casual in nature and were serious. That being so, the plea about absence of loss is also without substance".*

21. Taking into consideration of the embezzlement of money of the customers, the financial indiscipline as well as the other facts and circumstances it cannot be said that the punishment imposed on him is shockingly disproportionate to the proved misconducts. Hence there is no necessity to have any interference with the punishment imposed by the management bank on him.

22. **Point No.(iii):—**As charges 1, 3 and 4 are found to have been proved, for which the penalty imposed is found to be justified he is not entitled to any relief.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 29th day of January, 2015.

D. SREEVALLABHAN, Presiding Officer

#### APPENDIX

#### Witness for the workman

WW1 22.07.2014 Shri K V Manikandan

#### Witnesses for the management

MW1 01.11.2011 Shri Somasundaram

MW2 20.05.2013 Shri P Prasannan

#### Exhibits for the workman

W1 - Copy of Muster Roll for the month of August, 2005 of Central Bank of India, Kulathupuzha branch.

- W2 - Copy of list of cancelled entries as on 03.03.2006 of Central Bank of India, Kulathupuzha branch
- W3 - Copy of letter dated 11.07.2006 addressed to the workman by the Branch Manager, Life Insurance Corporation of India, Kollam
- W4 - Copy of letter dated 25.08.2006 addressed to the Assistant Regional Manager, Central Bank of India, Regional Office, Thiruvananthapuram by the General Secretary, Central Bank of India Employee's Union (Kerala), Trivandrum.
- W5 - Copy of letter No.ZO:RD:2001-02:326 dated 12.02.2002 addressed to the Regional Office, Trivandrum by the Chief Manager(RD), Zonal Office, Central Bank of India, Chennai.
- W6 - Copy of the Circular No.C.O.:PRS:2002-2003:19 dated 29.04.2002 with copy of Disciplinary Action Procedure issued by the Deputy General Manager(PRS), Central Bank of India, Central Office, Mumbai
- W7 - Copy of Certificate of appreciation dated 25.07.2005 issued by the Assistant General Manager, Central Bank of India, Regional Office, Trivandrum to the workman
- W8 - Copy of appreciation dated 14.12.1998 issued by the Zonal Manager, Central Bank of India, Chennai Zone to the workman

#### Exhibits for the management

- M 1 - Enquiry file.
- M1(a) - Charge Sheet dated 06.06.2006 issued by the Disciplinary Authority/Regional Manager, Central Bank of India, Regional Office, Thiruvananthapuram to the workman
- M1(b) - Copy of the gold loan card of Smt. Kumari
- M1(c) - Copy of scroll of 31.01.2006
- M1(d) - Copy of pass book of loan account No.350203 of Shri Ajikumar
- M1(e) - Copy of statement of account of the loan account No.TLPMRY/350203 of Shri Aji Kumar for the period from 27.02.2004 to 07.07.2006
- M1(f) - Copy of scroll of 04.11.2005
- M1(g) - Copy of gold loan card of Mrs Shafiya Basheer
- M1(h) - Copy of credit voucher dated 03.03.2006 in the name of Mrs Shafia Basheer for `10,000/-
- M1(i) - Copy of statement of account of the loan account No.GLAGRI/360382 of Mrs Shafiya Basheer for the period from

	03.02.2004 to 07.07.2006	M5	- Copy of the complaint dated 05.04.2006 addressed to the Branch Manager, Central Bank of India, Kulathupuzha Branch by Shri Ajikumar R
M1(j)	- Copy of scroll of 03.03.2006		
M1(k)	- Copy of gold loan card of Mr Abdul Rasheed Vaidyar	M6	- Copy of the letter dated 12.04.2006 addressed to the Manager, Central Bank of India, Kulathupuzha Branch by Shri Abdul Rasheed Vaidyar
M1(l)	- Copy of statement of account of the loan account No.GLAGRI/3601318 of Mr Abdul Rasheed Vaidyan for the period from 03.02.2004 to 07.07.2006	M7	- Gold loan card of Mrs Kumari
M1(m)	- Copy of scroll of 27.12.2005	M8	- Gold loan card of Shri Abdul Rasheed Vaidyar
M1(n)	- Copy of Loan Pass Book of Resmi Kudumbashree for Loan A/c No.350098	M9	- Cash credit voucher dated 31.01.2006 for an amount of `46,664/- as to the Gold Loan A/c No.GLAGRI 3601629 of Smt Kumari
M1(o)	- Copy of statement of account of the loan account No.GLAGRI/350098 of Resmi Sthree Sakthi for the period from 27.02.2004 to 07.07.2006	M10	- Pay-in-Slip dated 03.03.2006 for an amount of `10,000/-
M1(p)	- Copy of scroll of 18.03.2006	M11	- Copy of staff muster roll for the period from 01.01.2005 to 19.04.2006 maintained in Kulathupuzha branch
M1(q)	- Copy of Cheque No.2I3577 dated 27.03.2006 for `23,105/- drawn in favour of LIC of India, Branch No.2, Kollam		नई दिल्ली, 6 मई, 2015
M1(r)	- Copy of Cheque Return Memo dated 04.04.2006		
M1(s)	- Copy of forwarding letter dated 04.04.2006		
M1(t)	- Copy of Cheque No.213575 dated 11.03.2006 for `2,350/- drawn in favour of CBIEU(K)- A/c Conference Fund		
M1(u)	- Copy of Cheque Return Memo dated 28.03.2006		
M1(v)	- Copy of statement of accounts of account No.SB/13740 of Shri Manikandan and Smt Geethakumari Manikandan for the period from 01.01.2006 to 05.04.2006		
M1(w)	- Show Cause Memo dated 23.01.2007 issued by the Assistant General Manager, Disciplinary Authority, Central Bank of India, Regional Office, Thiruvananthapuram to the workman		
M1(x)	- Copy of statement of account of the loan account No.GLAGRI/3601 101 of Mrs Kumari Johny for the period from 03.02.2004 to 07.07.2006		
M2	- Copy of the letter dated 28.03.2006 addressed to the Manager, Central Bank of India, Kulathupuzha by Smt Kumari Johny		
M3	- Copy of the letter dated NIL addressed to the Central Bank Manager, Kulathupuzha by the President and the Secretary, Resmi Kudumbasree, 50 Acre		
M4	- Copy of the letter dated 12.04.2006 addressed to the Manager, Central Bank of India, Kulathupuzha Branch by Smt Shafiya Basheer		

**का.आ. 957.**—ऑद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ोदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (70/2007) प्रकाशित करती है जो केन्द्रीय सरकार को 05.05.2015 को प्राप्त हुआ था।

[सं. एल-12011/11/2007-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 6th May, 2015

**S.O. 957.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 70/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 05/05/2015.

[No. L-12011/11/2007-IR (B-II)]  
RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present....

Binay Kumar Sinha,  
Presiding Officer, CGIT cum Labour Court,  
Ahmedabad, Dated 11th December, 2014

**Reference: (CGITA) No-70/2007**

Order No. L-12011/11/2007-IR (B-II)

Assistant General Manager,  
Bank of Baroda,  
Regional office, Surat Plaza-III,  
5th Floor, Sayajiganj, Vadodara,  
Vadodara (Gujarat) (management) ...First Party

And

Their Workman  
Shri Dinshkumar Dahyalal Seth  
Through the General Secretary,  
Gujarat Bank Workers Organisation,  
C/o. Nimesh Dave,  
Satyanarayan Mandir,  
Sankdisheri,  
Kesur Mama Chakla,  
Bharuch-392001(workman) ...Second Party

For the first party: Shri Y.S. Panchal,  
Advocate

For the Union/Second party: Shri Ravi Nayan  
Shah, Advocate

#### AWARD

The Government of India/Ministry of Labour, New Delhi vide Order No. L-12011/11/2007-1R (B-II) dated 24.07.2007, referred the dispute for adjudication in respect of the matters specified in the Schedule:

#### SCHEDULE

"Whether the action of the management of Bank of Baroda in imposing the punishment of reduction by one stage in the time scale of pay for a period of one year during which he would not earn increment and the reduction will have effect of postponing his future increments, withdrawal of Head Cashier allowance on permanent basis and recovery of Rs. 2,40,000/- (Rupees Two Lakh Forty Thousands Only) by way of administrative action in sixty equal monthly instalment of Rs.4000/- plus interest is legal, proper and just? If not, to what relief the workman Shri Dinshkumar Seth is entitled to?"

2. Parties appeared a filed respective pleadings viz. statement of claim by the workman/2nd party (Ext.11) on 19.12.2012 and written statement by the Bank (1st party) Ext. 12 on 11.10.2013. According to workman, he was innocent and has been punished without proof of his negligence/ dishonest intention to cause loss of Bank's money to the tune of Rs. 2,40,000/- inquiry has not been conducted properly. Chargesheet was issued after lapse of one year suspension reasonable opportunity was denied etc. Prayer is made for setting aside the order of punishment and for repayment of recovered amount of Rs. 2,40,000/- and to any other relief to which he is found entitled. On the other hand, contention of the 1st party Bank is that due to negligence of the workman working as Head Cashier at

Vapi branch bank suffered a loss of Rs. 2,40,000/- missing from the cabin of the workman since he left the cabin without keeping the cash in cashbox and lock it. Inquiry under the chargesheet was conducted properly following the principles of natural justice and the punishment imposed on him is proper, legal and just and so the workman is not entitled to any relief and the reference is to be dismissed.

3. While the case record was running for leading evidence by the workman/2nd party, the 2nd party workman filed a withdrawal pursis (Ext.13) on 13.10.2014 and the 1st party's lawyer Shri Panchal noted no objection on this pursis. Both sides were heard on this withdrawal pursis which is in order. The workman voluntarily and unconditionally intend to withdraw from this reference case. 1st party Bank has also no objection in disposing of the case on withdrawal. So, the withdrawal pursis (Ext.13) is allowed.

There is no need for adjudication on the terms of reference as per Schedule. Simply in view of allowing withdrawal pursis (Ext.13), the terms of reference is answered in affirmative justifying the action of the management of Bank of Baroda in imposing the punishment so awarded to the workman Shri Dinshkumar Dahyalal Seth.

Accordingly, the reference is dismissed as withdrawn by the workman. No order of cost.

This is my award. Let copies of the award be sent to the appropriate Govt. for publication under section 17 of the I.D. Act, 1947.

BINAY KUMAR SINHA, Presiding Officer  
नई दिल्ली, 30 अप्रैल, 2015

**का.आ. 958.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ़सी०आई० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय चेन्नई के पंचाट (संदर्भ संख्या 39/2014) प्रकाशित करती है, जो केन्द्रीय सरकार को 21.04.2015 को प्राप्त हुआ था।

[सं. एल-22011/17/2014-आईआर (सीएम-II)]  
मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 30th April, 2015

**S.O. 958.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 39/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 21/04/2015.

[No. L-22011/17/2014 - IR(CM-II)]

MD. ZAHID SHARIF, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
CHENNAI**

Thursday, the 19th March, 2015

Present : K.P. PRASANNA KUMARI  
Presiding Officer

**Industrial Dispute No. 39/2014**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Food Corporation of India and their workman)

**BETWEEN**

Sri K. Rajendran: 1st Party Petitioner

**AND**

The Area Manager : 2nd Party/  
Food Corporation of India Respondent  
District Office, Post Box  
No. 2911, Tatabad  
Coimbatore-641012

**Appearance:**

For the 1st Party/Petitioner : M/s V. Ajoy Khose,  
Advocate

For the 2nd Party/Respondent : M/s M. Imthias,  
Advocate

**AWARD**

The Central Government, Ministry of Labour & Employment *vide* its Order No. L-22011/17/2014-IR (CM-II) dated 02.04.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the Management of Food Corporation of India, in not providing work to Sri K. Rajendran, Ancillary Worker under the Direct Payment System (DPS) of Food Corporation of India *w. e. f.* 16.11.2012 is justified? If not, to what relief the workman is entitled to?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 39/2014 and issued notices to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner had been working as ancillary labour under Direct Payment Scheme in the FCI Depot at

Peelamedu, Coimbatore for the past 25 years. The petitioner who was a member of Food Corporation of India Workers Trade Union had refused to participate in an agitation against the Management on 27.03.2012. He had started a new union by first week of April, 2012. Because of the refusal of the petitioner to join the agitation on 27.03.2012, he was beaten up by some union activists and a case has been registered on the basis of the complaint made by the petitioner. When the petitioner reported for duty on 28.03.2012 the Trade Union members who are accused in the criminal case prevented him from attending work and threatened that he would not be allowed to continue in work. The petitioner informed the Peelamedu Police Inspector and the Inspector tried for a compromise, but even after this the petitioner was not allowed to join duty. Finally, as instructed by the District Manager the Depot Manager provided work to the petitioner on 09.11.2012. He reported for duty on the said day and his attendance was marked, but he was not provided with work. He continuously reported for duty till 15.11.2012. Still he was not provided with work. After 16.11.2012 the Quality Control Manager refused work to the petitioner stating that he is to compromise with the union leaders if work is to be given to him. Even since his termination from service the petitioner was not able to get any job. An order may be passed setting aside the oral termination of the petitioner by the Respondent and directing the Respondent to reinstate the petitioner in service with continuity of service, back wages and other attendant benefits.

4. The Respondent has filed Counter Statement contending as follows:

The petitioner is an ancillary worker working under Direct Payment Scheme at the Food Storage Depot at Peelamedu since the year 1996. The Respondent has no knowledge of the allegations made by the petitioner against the Trade Union members. The Respondent also does not know if a new union was started by the petitioner. The petitioner has applied for Medical Leave for 27 days from 29.03.2012 to 04.05.2012 and also for further 184 days from 08.05.2012 to 08.11.2012. The petitioner has signed the Attendance Register from 09.11.2012 to 15.11.2012 but had not turned out for work at the work spot. The contention that the District Manager instructed the Depot Manager to provide work to the First Party *w.e.f.* 09.11.2012 is not correct. The petitioner was a chronic defaulter absenting from duty without any responsibility. The allegation against the Quality Control Manager is not true. He did not ask the petitioner to effect a compromise with the Trade Union members. The Respondent has issued memo to the petitioner for his unauthorized absence from

duty. Notice was sent to the petitioner on 17.09.2013 asking his explanation for his absence from duty from 01.07.2013 to 31.07.2013. He has not given any explanation. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Exts. W1 to Ext. W19 and Exts. M1 and Ext. M2.

#### **6. The points for consideration are:**

- (i) Whether the petitioner was orally terminated by the Respondent *w.e.f.* 16.11.2012?
- (ii) Whether the petitioner is entitled to an order of reinstatement in the service of the Respondent or for any other relief?

#### **The Points**

7. The petitioner was admittedly working as ancillary labour in the FCI Depot at Peelamedu, Coimbatore. It is alleged by the petitioner that he was denied work *w.e.f.* 16.11.2012 by the Quality Control Manager of the Respondent which in effect amounts to his oral termination from this date. According to him, the members of the Union of which he was earlier a member had become inimical towards him and had assaulted him consequent to which a crime had been registered against them. In retaliation they are said to have prevented him from attending work. It is the case of the petitioner that the Quality Control Manager of the Respondent also sided those Trade Union Members and wanted him to strike a compromise with them without which he was denied work.

8. The case of the Respondent is that the petitioner was chronic absentee from work and it was not a case of denial of work. It is stated that notice has been sent to the petitioner seeking his explanation for his absence from duty.

9. Even though it is not specifically stated in the Counter Statement, the case of the Respondent seems to be that the petitioner was actually not terminated from work, but he was only absenting himself from duty.

10. The petitioner has given evidence asserting that he has reported for work but he was denied work. An Officer of the Respondent has given evidence as MW1. On going through the version of this witness during cross-examination it could be seen that it must not have been a case of absence from duty on the part of the petitioner but denial of work by the Respondent, amounting to termination from service. The petitioner has complained in the Claim Statement itself that even though he had reported for duty on 09.11.2012 and continued to do so until 15.11.2012 and had signed the Attendance Register he was not allotted any work. This case seems to be true from the version of MW1. During cross-examination initially he has stated that the petitioner was not allotted any work during this period though he later corrected that it was the case of the petitioner not doing any work though he was allotted work.

At the same time MW1 has admitted that if a workers is not doing any work even though work is allotted to him, the Respondent will not be keeping quiet but action will be taken. There is no case for the Respondent that action was taken against the petitioner for not working from 09.11.2012 to 15.11.2012 even though he was allotted work. According to the petitioner, from 16.11.2012 he was totally prevented from doing any work. A memo has been issued to the petitioner seeking explanation for his absence but this was much later on 13.03.2013, after dispute was raised by the petitioner on 12.02.2013. Thus for almost for three months there was no action on the part of the Respondent for the alleged absenteeism by the petitioner. When this aspect is considered alongwith admission made by MW1 that he was not allotted any work even though he joined duty on 09.11.2012, the case of the petitioner that he was totally denied work after 16.11.2012 seems more probable. This amounts to termination of the petitioner from the service of the Respondent. Now the contention on the part of the Respondent is that actually there was no termination of the petitioner from service but action was taken against him for absence and he continued to be in service and therefore the dispute itself is a premature one. Certainly, this case of the Respondent is to be rejected when the circumstances are considered. The petitioner is to be treated to have been terminated from service. The petitioner is entitled to be reinstated in the position in which he was.

11. The petitioner has claimed back wages also alongwith reinstatement. However, the petitioner will not be entitled to back wages in the background of the case. He will be entitled to reinstatement in service with continuity of service and other benefits.

12. Accordingly, the Respondent is directed to reinstate the petitioner in service within a month of the award with continuity of service and other attendant benefits.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 19th March, 2015)

K.P. PRASANNA KUMARI, Presiding Officer

#### **Witnesses Examined:**

For the 1st Party/ : WW1, Sri K. Rajendran  
Petitioner

For the 2nd Party/ : MW1, Sri S. Kumar  
Management

#### **Documents Marked: On the petitioner's side**

Ex. No.	Date	Description
Ex.W1	01.11.2012	Copy of the FIR (Translated)
Ex.W2	13.03.2013	Show Cause Notice issued by the Management alleging

Ex.W3	15.06.2013	the 1st party was absenting for 121 days 16.11.2012 to 07.03.2013 Letter to the Assistant Labour Commissioner, Madurai	Ex.W17	06.11.2012	Representation letter to Depo Manager, FCI
Ex.W4	22.03.2013	Explanation letter to the above Show Cause Notice	Ex.W18	14.04.2012	Engg. Anna Thozhilalar Sangam Subscription Receipt
Ex. W5	18.04.2013	Another Show Cause Notice making the same allegations that he was absenting for 154 days	Ex.W19	16.04.2012	General Body Meeting of the Union
Ex.W6	26.04.2013	Explanation to the above Show Cause Notice	<b><u>On the Management's side</u></b>		
Ex.W7	17.09.2013	Another Show Cause Notice making same allegation absenting from duty w.e.f. 01.07.2013 to 31.07.2013 and 01.08.2013 to 31.08.2013	Ex.No.	Date	Description
Ex.W8	12.10.2013	Explanation to the above Show Cause Notice	Ex.M1	-	Sick leave statement of FSD Peelamedu DPS Workers
Ex.W9	12.02.2013	Copy of the petition filed under Section-2(A)(1) of the ID Act 1947 filed before Assistant Labour Commissioner, Madurai	Ex. M2	-	Register of Attendance for DPS Workers at FSD
Ex.W10	13.07.2013	Reply statement filed by the management before the Assistant Labour Commissioner to the above petition	नई दिल्ली, 30 अप्रैल, 2015		
Ex.W11	-	Rejoinder statement filed by the 1st Party before the Assistant Labour Commissioner	<b>का.आ. 959.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ईंसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 17/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-04-2015 को प्राप्त हुआ था।</b>		
Ex.W12	30.01.2014	Failure report by the Assistant Labour Commissioner	[सं. एल-22012/93/2005-आईआर (सीएम-II)] मो. जाहिद शरीफ, अनुभाग अधिकारी		
Ex.W13	08.11.2011	Order in WP No. 204467 to 204488 / 2011 by the High Court of Madras praying direction for permanency of the 1st Party by the 2nd Party (1st Party in WP No. 24480/2011)	New Delhi, the 30th April, 2015		
Ex.W14	01.11.2012	FIR in Crime No. 950 of 2012	<b>S.O. 959.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 17/2006) of the Cent. Govt. Indus.Tribunal-cum-Labour Court, ASANSOL as shown in the Annexure, in the industrial dispute between the management of Eastern Coalfields Limited, and their workmen, received by the Central Government on 21-04-2015.</b>		
Ex.W15	16.06.2012	Representation letter to Depo Manager, FCI	[No. L-22012/93/2005-IR (CM-II)] MD. ZAHID SHARIF, Section Officer		
Ex.W16	21.07.2012	Representation letter to Depo Manager, FCI	<b>ANNEXURE</b> <b>BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL</b>		

**PRESENT:** Sri Pramod Kumar Mishra,  
Presiding Officer

**REFERENCE NO. 17 OF 2006**

**PARTIES:** The management of Nimcha (R)  
Colliery of M/s. ECL  
Vs.  
Sri Raj Kumar Bhuiya

## REPRESENTATIVES

For the management: Sri P. K. Goswami, Ld. Adv.

For the union (Workman): Sayantan Mukherjee, Ld. Adv.

Industry: Coal State: West Bengal

Dated: 18.03.2015

## AWARD

In exercise of powers conferred by clause (d) of sub-section(1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act. 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/93/2005-IR(CM-II) dated 13.06.2006 has been pleased to refer the following dispute for adjudication by this Tribunal.

## SCHEDULE

"Whether the action of the management of Nimcha (C) Colliery of M/s. Eastern Coalfields Limited in dismissing Sh. Raj Kumar Bhuiya, U.G.Loader from service w.e.f. 05 07.2004 is legal and justified? If not. to what relief the workman is entitled to?"

Having received the Order No. L-22012/93/2005-IR(CM-II) dated 13.06.2006 of the above said reference from the Govt. of India. Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 17 of 2006 was registered on 11.07.2006 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

Sri P K. Goswami, Ld. Adv. appears on behalf of the management but none appears on behalf of the union/ workman. The union/workman is neither appearing nor taking any step from the beginning.

On perusal of the case record I find that notices were issued to the union on 19.07.2006, 12.01.2012 and 29.09.2014. Even the case was ordered ex-parte against the union by the then P.O. So far 37 opportunities have been granted to the workman / union but to no effect. It seems to me that the union is now not at all interested to proceed with the case further. As such the case is closed and accordingly a '**No Dispute Award**' may be passed.

## ORDER

Let an "Award" be and same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi, for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2015

**का.आ. 960.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ़-सी-आई<sup>०</sup> के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 213/1991) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-04-2015 को प्राप्त हुआ था।

[सं. एल-22012/270/एफ/1991-आईआर (सी-II)]

मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 30th April, 2015

**S.O. 960.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 213/91) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management Food Corporation of India, and their workmen, received by the Central Government on 21-04-2015.

[No. L-22012/270/F/1991-IR (C-II)]  
MD. ZAHID SHARIF, Section Officer

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

### NO. CGIT/LC/R/213/91

Shri Sugriv Sai,  
C/o Shri Ghanshyam Yadav,  
North Forest Office,  
Raj Talab,  
Raipur

Workman

Senior Regional Manager,  
Food Corporation of India,  
Chetak Bhawan,  
Maharana Pratap Nagar,  
Bhopal

Management

## AWARD

Passed on this 18th day of February 2015

As per letter dated 13-11-1991 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/270/F/91-1R(Coal-II). The dispute under reference relates to:

" Whether the action of the management of Food Corporation of India in relation to their Kapa Division in dismissing/ terminating the services of Shri Sugriv

Sai, Assistant Grade-I (Depot) w.e.f. 31-3-87 is justified and proportionate to the gravity of the offence committed by him? If not, to what relief the workman entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 3/1 to 3/2. Case of Ist party workman is since termination of his service, he is unemployed and has no source of income for his livelihood. He totally depends on mercy of his friends and relatives. That he is in hand to mouth situation. The workman is handicapped. Looking to his pathetic condition, he prays for mercy from Court. He also requests to explain benefit of Government's policy is relevant in the matter.

3. IIInd party filed Written Statement at Page 5/1 to 5/5 opposing claim of workman. IIInd party claims ignorance about employment of 1st party workman. If workman is allowed legal assistance, management also requests permission to engage Advocate in the case. It is submitted that Ist party was employed on the post of asstt. Grade I. He was working as Depot Incharge, Damoh. During the relevant period, depot suffered substantial loss on account of shortage of stocks. Chargesheet was issued to workman under regulation 58 of FCI Staff Regulation Act, 1971. Workman was allowed opportunity for his defence. It is further contended that order of suspension of workman was revoked on 28-6-84. Workman had not submitted statement of claim. During enquiry proceeding workman was extended opportunity for his defence. Principles of natural justice were followed. Enquiry Officer submitted his report on 12-2-87 holding charges against workman proved. Considering the report of Enquiry Officer, punishment of dismissal was imposed against workman. The appeal filed by workman was dismissed on 18-9-89. IIInd party reiterate that enquiry was conducted properly. IIInd party also submits if enquiry is found vitiated opportunity to prove misconduct be given to the management. Punishment of dismissal is imposed after finding of Enquiry Officer is legal. It is submitted that workman received wages more than 1600 per month. He is exercising managerial power as such not covered as workman under Section 2(s) of ID Act.

4. Ist party filed rejoinder at Page 7/1 to 7/6 reiterating his contentions in statement of claim. He has contended that he was not given opportunity to cross-examine witnesses of management. After taking over charge, workman was working as Depot Incharge.

5. Management filed reply to rejoinder at Page 12/1 to 12/10 reiterating contentions in Written Statement.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under.

My findings are recorded against each of them for the reasons as below:—

(i) Whether the enquiry conducted against workman is proper and legal?	In Affirmative
(ii) Whether the alleged misconduct is proved from evidence in Enquiry Proceedings?	
(iii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Affirmative
(iv) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

### REASONS

7. Present matter is very old. Workman has not adduced evidence in reference proceeding despite of repeated chances granted to him. Management filed affidavit of evidence of witness Mrinal Singh supporting contentions of management that chargesheet was issued to workman, enquiry was conducted following principles of natural justice. Enquiry Officer Shri M.N. Mukherjee submitted his report. Despite of public notice in newspaper workman failed to appear in Enquiry Proceedings. Evidence of management's witness remained unchallenged as the workman failed to appear and cross-examine the witness of the management. Documents of Enquiry Proceedings are produced. For above reasons, I record my finding in Point No. 1 in Affirmative.

8. Point No. 2, 3— workman has failed to adduce evidence. The copies of Enquiry Proceedings are produced. The evidence of management's witnesses Shri Jain Gupta shows shortage of different kinds of grain during the period workman was incharge of Damoh Department. The evidence of management's witness Shri N.P. Singh, A.K. Ghosh, S.K. Katara is not challenged in cross-examination. Witness Shri C.L. Kori, Sheikh Ibrahim is not challenged in cross-examination. I find no reason to discard unchallenged evidence of management's witness. The evidence of management's witness is sufficient to prove charges against workman. Therefore I record my finding in Point No. 2 in Affirmative.

9. Point No.3— the evidence on record shows that charges about shortage of food grains while workman was incharge of Damoh Depot of FCI are proved from evidence. Considering nature of charges, punishment of dismissal could not be interfered or cannot be said excessive or illegal therefore I record my finding in Point No.1 in Affirmative.

10. In the result, award is passed as under:—

- (1) The action of the management of Food Corporation of India in relation to their Kapa Division in dismissing/ terminating the services of Shri Sugriv Sai, Assistant Grade-I (Depot) *w.e.f.* 31-3-87 is legal and proper.
- (2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2015

**का.आ. 961.—**औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एसॉइंसीएल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 36/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21/04/2015 को प्राप्त हुआ था।

[सं० एल-22012/72/2000-आईआर (सी-II)]

मो० जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 30th April, 2015

**S.O. 961.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 36/2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of SECL and their workmen, received by the Central Government on 21-04-2015.

[No. L-22012/72/2000-IR (C-II)]

Md. ZAHID SHARIF, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/36/2001

Shri Bhaiya Lal Lodhi,  
Ex-Clipman,  
Jhiriya Mohalla,  
Purani Basti,  
School ke Upar,  
Vill./PO Dhanpuri,  
Distt. Shahdol

...Workman

*Versus*

Sub Area Manager,  
Chachai & Vivek Sub Area of SECL,  
PO Dhanpuri,  
Distt. Shahdol

...Management

#### AWARD

Passed on this 27th day of March 2015

1. As per letter dated nil by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No.L-22012/72/2000-IR (C-II). The dispute under reference relates to:

"Whether the action of the Sub Area Manager, Amlai and Chachai Sub Area of SECL PO Dhanpuri, Distt. Shahdol (MP) in terminating the services of Shri Bhaiyalal Lodhi Ex-Clipmen, Vivek Mine *w.e.f.* 22/23-6-1995 is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 4/1 to 4/2. Case of Ist party workman is that he was appointed as clipmen on 1-6-1974 against clear vacant post. His services are covered by standing orders and Service Rules Regulations of SECL. He continuously worked from 1974 to 1995. He acquired status of permanent employee. That workman was seriously ill and was under treatment from 31-10-94 to 4-12-94. He could not attend his duties. After his fitness, he approached colliery management with Medical Certificate for resuming duty. Management instead of allowing him to resume duties initiated DE for his absence from duty. His services were terminated from 23-6-95. He submits that proper opportunity for his defence was not allowed to him. Medical certificate issued by Doctor was rejected by Enquiry Officer without assigning any reasons. On such ground, workman prays for his reinstatement with back wages.

3. IIInd party filed Written Statement at Page 7/1 to 7/9 opposing claim of workman. Preliminary objection is raised that workman was terminated on 23-6-95. The dispute is belatedly raised after several years is not tenable. The ratio held in AIR-2000-SC-839 is quoted. It is further submitted that 1st party workman was absent without intimation or sanctioned leave on various occasions. Workman was also absent during the period 24-3-93 to 29-1-94. Chargesheet was issued to workman under Clause 26.24 of standing orders. The enquiry was conducted and charges were proved. Workman was found guilty of misconduct. Though workman could have been dismissed on humanitarian ground the workman was let off and allowed on duty. His absence was treated as dies-non.

4. Ist party workman did not show improvement in his conduct. His attendance was poor. In spite of workman was given opportunity to improve, he remained absent from duties unauthorisely without permission or sanctioned leave. Again charge sheet was issued to workman on 13-12-95 under clause

26.24, 26.30 of standing orders. The attendance of workman in 1992 was 157 days, in 1993 was of 42 days and in 1994 was of 17 days. Reply given by workman was not satisfactory. Therefore enquiry was initiated. Workman participated in enquiry along with co-worker Khikhan Das. The charges were explained to him. Workman denied charges explained to him. Enquiry was conducted. Management examined witness Shri R.K.Pandey, leave clerk, Udaibhan Soni. The document Form B & G Registers were produced. It is submitted that Enquiry officer submitted report holding workman guilty of charges. Show cause notice was issued to workman. His explanation was found unsatisfactory by Disciplinary Authority. For proved misconduct of unauthorized absence, workman was dismissed from service. It is reiterated that enquiry conducted against workman is legal. He was given opportunity for his defence. If enquiry is vitiated, management be given opportunity to prove misconduct. That workman had not reported to Medical officer of colliery. He did not avail treatment from hospital of the company. On such grounds, IInd party prays for rejection of claim.

5. Ist party workman submitted rejoinder at Page 9/1 to 9/2 reiterating his contentions in statement of claim.

6. As per order dated 26-7-2012, enquiry conducted against workman was found proper and legal.

7. Considering pleadings on record and orders on preliminary issue, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Negative
(iii) If not, what relief the workman is entitled to?"	As per final order

### REASONS

8. As stated above, enquiry conducted against workman is found proper and legal. Therefore the question whether charges alleged against workman are proved or not needs to be decided considering the evidence in Enquiry Proceedings. Exhibit M-1 is chargesheet issued to workman under clause 26.24 of habitual absence dated 24-1-94. Said chargesheet pertains to absence from duty from 24-4-93.

As per Exhibit M-2, workman was found guilty, in spite of dismissing from service, on humanitarian ground he was let off and allowed on duty. The period of absence was treated as dies-non. Exhibit M-3 is settlement between management and Union agreeing to various conditions. Condition No. 3 is that it was agreed that the period of absence of workman will be treated dies-non. Exhibit M-4 is chargesheet dated 13-12-94 pertaining to absence from 31-10-94 to 8-12-94. Exhibit M-5 is notice of enquiry given to workman. M-6 is copy of Enquiry proceedings. The statements of management's representative and management's witness Shri R.K. Pandey, Udaibhan Soni as well as the workman were recorded. Management's witness have stated about unauthorized absence of the workman and his working days in 1992 was 157 days, in 1993 was of 42 days and in 1994 was of 17 days. The evidence of management's witnesses was not challenged rather the workman in his statement of claim stated that he was suffering from illness and he was receiving treatment. Earlier he was suffering from heart disease. Enquiry officer observed that workman had not sent intimation of his illness or receiving treatment at colliery hospital. It was the reason that Enquiry Officer held charges proved. Workman says he was absent, he has not intimated to management, any document of his treatment are not produced. The evidence is sufficient to prove that the workman was unauthorisely absent. For above reasons, I record my finding in Point No.1 in Affirmative.

9. Point No. 2—In view of my finding in point No. 1 that charges against workman are proved from Enquiry Proceedings, question remains whether punishment of dismissal imposed on workman is proper and legal. The statement of workman that he was suffering from heart disease and other ailments is not challenged by the management's representative. The representation submitted by workman Exhibit M-10 finds clear reference of his illness and he was not allowed to join duty after he was found fit. The pleadings and evidence on record shows that workman joined service on 1-6-74. He was in service of IInd party management for more than 20 years. While imposing punishment of dismissal, Disciplinary Authority did not consider his long service. In the circumstances, it appears that punishment of dismissal imposed against workman is excessive. In my considered view, considering length of service of workman, punishment of compulsory retirement would be appropriate. Accordingly I record my finding in Point No. 2.

10. In the result, award is passed as under:—

- (1) The action of the Sub Area Manager, Amlai and Chachai Sub Area of SECL PO Dhanpuri, Distt. Shahdol (MP) in terminating the services of Shri Bhaiyalal Lodhi Ex-Clipmen, Vivek Mine w.e.f. 22/23-6-1995 is not proper and legal.

(2) Punishment of dismissal of workman is quashed. Punishment of dismissal is modified to compulsory retirement. IIInd party is directed to allow retiral benefits to Ist party workman.

R.B. PATLE, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2015

**का.आ. 962.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू० सी० एल० के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 43/1982) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-04-2015 प्राप्त हुआ था।

[सं० एल-22011/10/1982-डी० 4(बी)/आईआर (सीएम-II)]

मो० जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 30th April, 2015

**S.O. 962.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 43/82) of the Cent. Govt. Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of WCL and their workmen, received by the Central Government on 21-04-2015

[No. L-22011/10/1982-D.IV(B)/IR (CM-II)]

Md. ZAHID SHARIF, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/43/82

Secretary

Samyukta Khadan Mazdoor Sangh (AITUC),  
PO Chandametta,  
Distt Chhindwara ...Workman/Union

Versus

General Manager,  
Western Coalfields Ltd.,  
Pench Area,  
PO Parasia,  
Distt. Chhindwara ...Management

#### Award w.r.t. back wages after remand of matter by Hon'ble High Court.

Passed on this 26th day of March 2015

1. As per letter dated 18-6-92 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under

Section-10 of I. D. Act, 1947 as per Notification No. L-22011(10)/82-D.IV(B). The dispute under reference relates to:

"Whether the refusal of the management of Pench East Colliery of Western Coalfields Ltd. in Pench Area, PO Parasia, Distt Chhindwara to provide work to Shri Ramjanam and 300 others truck loaders employed at their Dighawani Quarry and to regularize them as Colliery workers is lawful and proper? If not, to what relief are these workmen entitled?"

"Whether the dismissal of S/Shri Ayub S/o Hafijullah, Fuljhar S/o Anoop, Setband S/o Rampat, Dhonda S/o Charitra, Baliram S/o Panchoo, Yashin S/o Sahadat, Tub loaders Rawanwara Khas Colliery of Pench Area of WCL, PO Parasia, Distt. Chhindwara w.e.f. 24-4-78 was legal and Justified? If not, to what relief are these workmen entitled?"

"Having regard to the arbitration award dated 16-9-77 in the case of Shri Ramuttin, Tub loader, whether the workman named above is entitled to wages for the period from 1-10-75 to 27-9-77. If so, to what relief is the workman entitled?"

2. Reference R/43/82 by Government was decided on 27-6-90. Ist party all 301 workers represented by Union were allowed reinstatement with backwages. The award was challenged before Hon'ble High Court by management in Miscellaneous petition 2681/90 as per order passed by Hon'ble High Court dated 23-3-05. The Matter is remanded to this Tribunal to decide question of backwages afresh in the light of discussions made in the judgement.

3. In para-16 of the judgment, his Lordship observed coming to the question of backwages CGIT has not given any finding w.r.t. gainful employment of workman for period of 10 years for which backwages were granted. Gainful employment is one of the material factor to be considered as held by Apex Court in 1983-SCC-459, 1984-1-SCC-283.

4. When case was taken for hearing, it was noticed that the documents in the matter were weeded out on 22-5-03. The record shows Union had sort various amendments pertaining to raising dispute by Union for regularization of Ramjanam and 300 others. Award was passed on 27-6-90. Said award was challenged in Writ Petition No. 2618/90 that Hon'ble High Court *vide* order dated 13-12-90 stayed payment of backwages. Legality of representation of 99 claimants by Shri Rajnu Paswan etc. It is surprise to say that the amended pleadings not relate to gainful employment of all the labours connected with the dispute. IIInd party management filed additional Written Statement at Page 17 to 18 raising the objection that Rajnu Paswan was not having any authority to represent the claimants. He has no *locus-standi* in view of Section 36 of ID Act. The controversy about *locus-standi* of Rajnu Paswan was decided by my predecessor as per order dated

2-2-09 observing that all 99 workers have filed vakalatnama of Shri R.C. Shrivastava and 26 out of them have also filed vakalatnama of Shri S.K. Rao Advocate meaning thereby that out of 99 workers, 26 workers have engaged two advocates namely Shri R.C. Shrivastava and Shri S.K. Rao, it is incorrect to say that 99 workers are not genuine persons.

5. Considering the controversy between parties relating to back wages and directions issued by Hon'ble High Court, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether it is established by Ist Party that Ramjanam and 300 others Truck Loaders were not in gainful employment after their discontinuation from work?	In Affirmative
(ii)	Whether Ramjanam and 300 others are entitled to backwages?	In Affirmative
(iii)	If so, to what relief the workman is entitled to?"	As per final order

### REASONS

6. Shri Mahendra Chatterjee filed affidavit of his evidence as witness of Ist party. He has narrated the course of litigation and awards passed by this Tribunal. The order of reinstatement was confirmed. SLP was filed by IIInd party. Hon'ble Apex Court directed to reinstate workman within 10 days. The question of back wages was to be decided by Hon'ble High Court within 3 months. Lastly in his affidavit, he says that after discontinuation of service from 21-6-80 till his reinstatement, he and all other workers were not employed. However in his cross-examination, he says that affidavit of his evidence is related to personal claim and not w.r.t. the claim of other workers. His evidence in cross-examination shows that out of 301 workers, 9 workers were reinstated in mines in Maharashtra, remaining 292 workers were reinstated in Pench Area. He claims ignorance w.r.t. dispute of Identity of workers and criminal case prosecuted against any of the workman or Secretary of Union Shri Bannerjee. He also claims ignorance that out of 292 workers, 100 workers did not submit information for filling Form B. he admits that 192 workers submitted information were terminated from service R/88/95 is pending w.r.t. legality of termination of services of those 100 labours. Thus the evidence of Mahendra Chatterjee on the point of employment needs to be considered for his own claim.

7. Ist Party has submitted identical affidavit of workers Vidhi, Deenanath, Rampatathi & Brijlal Surju. All of them have stated that they were not in employment after termination of their service till their reinstatement. Shri Vidhi

in his cross-examination says that he was resident of Mahadanda Distt. Maharajganj in U.P. He was residing with his brother at Pench Kanhan Area. He was born in 1959. He was discontinued in 1980 and reinstated in 1992. He was married. He had come with his wife. He denied that he was doing any work for maintaining his family members. He did not take any efforts to work under any contractor. He was visiting his native place twice in a year. His family hold some lands but he was unable to tell his income. Shri Dinanath in his cross-examination says that he was resident of East Chhindwara. He resides in ancestral house. He was reinstated in April 1992. His form B was filled. He was married 10 years before. During 1980 to 1992, he was residing with his maternal under at Tandsi. His maternal uncle was supporting him. He was doing miscellaneous work of filling water etc. in cross-examination of other witnesses, nothing was brought by the counsel for management that those workers were employed at any other place. Rampatathi said he was supported by his uncle. After his reinstatement, quarter was not allotted to him though other workers Paras Shah Bahadur, Surendra, Rajwanti Dev, Lalman, Ambika, Brijlal, Ramnaresh, Paitun, Ramayan, Shivedhani, Kaviraj, Sursari, Bachhu, Jawahar, Bihari, Nageshwar, Nandu, Kailas, Attarlar Prabhunath, Nandlal, Harihar, Ramjanam, Ramvriksh, Hira, Dayanand, Dhirju, Lakan, Bheegal, Purnawasi, Kalicharan, Ramnayan, kedar, Prabhunath, Kanhai, Videshi, Sajaat, Ramvachan and Rampati filed affidavit of evidence stating that they were unemployed but they failed to appear for their cross-examination therefore their evidence cannot be considered in the matter.

8. Copy of evidence of Mahendra Chatterjee in R/88/95 is produced at Exhibit M-1. The reference No. 88/95 was about termination of services of 100 employees who failed to furnish information for filling Form B. his evidence related to termination of services of 100 workers in R/88/95. Subject matter was different therefore the same cannot be considered for deciding the question of back wages.

9. Shri Bharat Singh Sakrawar Union Secretary in his affidavit of evidence says that the workers related to the dispute were reinstated on 6-4-92. Workers were not doing any work during 1980 to 1992. In his cross-examination, he says that he was not working on any post in WCL. He got membership of SKMS Union in 1978. He was elected General Secretary of Union in 2008, 2012. During 1978 to 2008, he was working as office Secretary. No election was held for the post of Office Secretary. Union General secretary had appointed him as Office Secretary. He received education in Government law college, Chhindwara during 81 to 84. He filed affidavit of evidence as per record in Union office. The documents relating to the matters are produced. There is absolutely no question put to him about non-employment of any of the workers. His evidence that all the workers were not doing any work after discontinuation of their services still reinstatement remained unchallenged.

10. In evidence of Shri Rajnu Paswan on affidavit, he narrated about the journey of litigation that 300 workers reinstated in 1992. 100 workers were illegally terminated by management. He has represented case of 99 workers in CGIT & High Court. Those 99 workers were not doing any work till their reinstatement or retirement. In his cross-examination this witness says he was not working in WCL, Pench Area. That he was member of SKMS Union Pench Area, Chhindwara. The workers related to the dispute had taken membership of SKMS Union but he was unable to tell exact period. He denied that all workers relating to the dispute were from Bihar. He explained that workers were from MP, UP, West Bengal, Bihar etc. that after termination in 1990, all the workers were residing with their relatives, brothers etc. till their reinstatement in 1992. He was unable to tell which contractors were working in Pench Area. That he did not make efforts for providing work to those workers. He claimed that he was not acquainted with the contractors. Those 100 workers were supported by their brother, father, relatives. He received its information on personal visits. All those 100 workers were residing in Pench Area itself. He denied that he is depositing against management as he was terminated from service. He claimed ignorance about criminal case prosecuted against 16 workers and Union Secretary Shri P.K. Bannerjee. Evidence of Shri Rajnu Paswan about 100 workers were not doing any work is not shattered in his cross-examination.

11. Evidence of management's witness Shri K.P. Sharma is on the point that Shri Ramjanam, Bechu, Rajkumar, Kishan, Dwarika, Rambishal, Harinandan, Jogendra, Ram lagan and Jogendra were married. They were having children, they were in gainful employment. However the witness remained absent for his cross-examination therefore his evidence cannot be considered.

12. Evidence of Hirok Sarkar is on the point that Sheikh Mukhtar, Balikaran, Rampalat, Munna were married. They were in gainful employment. Said witness was not cross-examined by counsel for Ist party. His affidavit is silent about the period of gainful employment where they were working etc. the details are not given in his affidavit of evidence. Management's witness Shri A.C. Koushik in his affidavit has stated that the establishment of IIInd party was in loss and many posts have been abolished, no appointments were made since 1988. His evidence remained unchallenged. His evidence is not devoted on the point of gainful employment of any of the workers related to reference.

13. Document Exhibit M-5, M-6 shows loss incurred by IIInd party from 1987-88 to 2013-14.

14. Learned counsel for Ist party Shri R.C. Shrivastav relies on ratio held in Case of Ramnath versus Extra Assistant Commissioner reported in AIR 1952-NGP-313. Their Lordship held the law doesnot require any number of witnesses to prove a particular fact. Ofcourse it is open to

a final court of fact to believe or to disbelieve a statement, but simply because the statement is of one witness that cannot by itself be a ground for not acting upon that testimony.

The facts of present case are not comparable as in above cited case, the applicant was appointed and he refused to perform duty. In context of the facts stated, the ratio was held in the case. Present dispute pertains to backwages after all 301 workers have been reinstated in service. Ratio cannot be beneficially applied to case at hand.

In case of M.P. State Electricity Board versus Jarina Bee reported in 2003-II-LLJ 244, their Lordship dealing with backwages held award of full backwages not natural consequence of setting aside dismissal of workman. It has discretionary element and no strait jacket formula can be evolved.

In case of Bhojabhai Danabhai Rabari and State of Gujarat reported in 2012-I-LLJ-174 (Guj) their Lordship of Gujarat High Court dealing with backwages held not to be granted on reinstatement. Workman held was not entitled to back wages. In para-3, their Lordship observes the issue of entitlement of back wages has been considered by this court time and again and consistently held that even after punishment imposed upon the employee is quashed by the Court or Tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the Court keeping in view the facts in their entirety as no strait jacket formula can be evolved nor a rule of universal application can be laid for such cases. Even if the delinquent is reinstated, it would not automatically make him entitled for back wages as entitlement to get back wages is independent of reinstatement.

Similar view was taken in case of Chairman cum Managing Director, Coal India Ltd. and others *versus* Ananta Saha and others reported in 2011-III-LLJ-165(SC).

In case of Kendriya Vidyalaya Sangathan and another *versus* S.C. Sharma reported in 2005-II-LLJ 153, Supreme Court set aside, however that part of the impugned order which granted the respondent back wages. It was observed the respondent had neither pleaded nor placed any material to show that he was not gainfully employed. It pointed out that the initial burden was on the employee to prove the above fact.

In present case, no doubt all 300 workers are not examined on the point of their employment after termination of their service till their reinstatement. However evidence of Union General Secretary Shri Bharat Sakrawar on the point remained unchallenged. Evidence of other witnesses also supports, also corroborate evidence of Shri Bharat Sakrawar the management has not adduced cogent evidence that any of the workers were in gainful employment.

15. The evidence of workers discussed above shows that some of them were doing some miscellaneous work. The period of claim of backwages is from 1980 to 1992. All workers were of younger age. It is difficult to believe that all those 300 workers were idle for more than 12 years. The evidence of the witnesses that they were supported by their relatives, father, brother etc. cannot be discarded unless some cogent reason is brought before court. No such evidence is brought by management. Considering ratio discussed in above cases, the matter of backwages vests in discretion of this Tribunal. The evidence of witnesses of IIInd party that the establishment is in loss cannot be a ground for rejection of claim for backwages. Considering totality of evidence and circumstances and that either side is not allowed to take disadvantage to enrich themselves on account of long journey of litigation. In my considered view, 25% of backwages would be appropriate. For reasons discussed above, I record my finding in Point No. 1, 2 in Affirmative.

16. In the result, award is passed as under:—

"301 workers shown in the list with the order of reference are entitled to 25% backwages from date of their discontinuation i.e. 21-6-80 till reinstatement in 6-4-1992. If any of the workers attain age of superannuation or dies during intervening period, the backwages will be restricted to the date of their superannuation or death. Amount of back wages as per award be paid to the all the 301 workers within 30 days from the date of publication of this Award."

In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

17. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per fules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2015

**का.आ. 963.—**औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ईंसीएल० के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 38/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21/04/2015 को प्राप्त हुआ था।

[सं. एल-22012/303/2003-आईआर (सीएम-II)]  
मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 30th April, 2015

**S.O. 963.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 38/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court ASANSOL as shown in the Annexure, in the industrial dispute between

the management of Kalipahari (R) Colliery of M/s. ECL, and their workmen, received by the Central Government on 21/04/2015.

[No. L-22012/303/2003-IR(CM-II)]  
MD. ZAHID SHARIF, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

**Present:** Shri Pramod Kumar Mishra  
Presiding Officer

#### Reference No. 38 of 2004

**Parties:** The management of Kalipahari (R)  
Colliery, ECL  
Vs.  
Sri Kashinath Shaw

#### REPRESENTATIVES:

For the management:	Sri P.K. Das, Ld. Advocate, ECL
For the union (Workman):	Sri R.K. Tripathi, Org. Secy., KMC
Industry : Coal	State : West Bengal

Dated: 10.03.2015

#### AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its letter NO.L-22012/303/2003-IR(CM-II) dated 23.06.2004 has been pleased to refer the following dispute for adjudication by this Tribunal.

#### SCHEDULE

"Whether the action of the management of Kalipahari (R) Colliery in changing the date of birth in the record of management in respect of Sh. Kashinath Shaw, Trammer from 19.10.1957 to 18.01.1945 is legal and justified? If not, to what relief the workman is entitled to?"

Having received the Order No. L-22012/303/2003-IR(CM-II) dated 23.06.2004 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 38 of 2004 was registered on 05.07.2004. Accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties

concerned. Both the parties appeared in the Tribunal, through their representative and filed their separate sets of written statement in support of their respective claims.

In brief, the workman has stated in his written statement that the worker concerned Sri Kashinath Shaw is a permanent employee of Kalipahari (R) Colliery under Sripur Area of M/s Eastern Coalfield Limited. During the time of his appointment his date of birth was assessed by the M.O. of the colliery as 25 years as on 19.10.1982. In the Appointment Letter which was subsequently issued by the management his date of birth was mentioned as 25 years as on 19.10.1982. Subsequently, the service Record Excerpts was supplied to him by the management and in the Service Record Excerpts his age was also recorded as 19.10.1957. Taking into account the date mentioned in his Medical Report and Appointment letter where the same was recorded as 25 years as on 19.10.1982. In his Identity Card issued by the management his date of birth was also recorded as 19.10.1957. But, of late, the management of Kalipahari colliery *vide* their letter Ref. No. 1548 dated 23/24.12.1996 advised him to submit documents in support of his date of birth stating therein that his date of birth is not recorded in the Colliery Form 'B' Register. Soon after that, another letter was issued to him by the Dy. Personnel Manager of Kalipahari (R) colliery informing him that his date of birth is 18.01.1945. Workman demanded that his date of birth be corrected as 19.10.1957 which is already recorded in his pre-employment Medical report. Appointment Letter, Service Record Excerpts and Identity Card all issued by the management under the signature of the concerned officers. But he was superannuated in year 2005 in unlawful manner by the management.

Management, on the other hand in their written statement stated that the instant dispute raised by the concerned person is misconceived. Management admitted that the concerned workman was appointed on 30.03.1983. At the time of his Appointment his age was recorded as 25 years as on 19.10.1982 in some of the documents. But in the 'Form B Register' which is statutory and very vital document the column of 'Date of Birth' was kept blank. Therefore, he was advised to appear before the Apex Medical Board on 18.7.1997. Accordingly, Sri Kashinath Shaw appeared before the Apex Medical Board and his date of birth was recorded 10.01.1945 in Form 'B' Register as per report of Apex Medical Board and the same date of birth was also computerized. So, the employee has been correctly superannuated by the management in the month of January, 2005. Management has further stated that in the instant case there is no anomaly in his date of birth and therefore, the workman is not entitled to any relief.

Workman has filed nine Xerox copies of documents and 4 original documents. The workman has filed an

Affidavit in his oral evidence and he has been cross-examined by the management. Management has not filed any oral or documentary evidence.

Shri R.K. Tripathi, Learned Union Representatives appeared on behalf of the workman has argued that at the time of his appointment of Sri Kashinath Shaw his date of birth was determined 25 years as on 19.10.1982. Accordingly, his date of birth was already recorded as 19.10.1957 in his Service Record Excerpts, Identity Card and in his Appointment Letter where his age was recorded as 25 years as on 19.10.1982. But at the time of preparing the computerized record of date of birth the date of birth of Sri Kashinath Shaw was wrongly recorded as 19.01.1945 in lieu of 19.10.1957. So the workman should be allowed to continue in service based on his date of birth as 19.10.1957. Sri P.K. Das, Learned Advocate appeared on behalf of the management argued that entering the date of birth in computer is a part of a system. The workman did not submit any documentary evidence in support of his date of birth correction.

I have heard the argument of Sri R.K. Tripathi, Chief Organizing Secretary of the union (KMC) appearing on behalf of workman and Sri P.K. Das, Learned Advocate, appearing on behalf of the management (Kalipahari (R) Colliery, ECL).

It is not disputed that Sri Kashinath Shaw was a permanent employee of Kalipahari (R) Colliery under Sripur Area of M/s Eastern Coalfields Limited. It transpires from records that the concerned workman is an illiterate person. It has been also accepted by both the parties that before employment his age was assessed by the M.O., of the colliery as 25 years as on 19.10.1982 and the same was duly mentioned in his Appointment letter issued by the Management. Similarly, in the Identity card and Service Excerpts his date of birth was mentioned by the management as 19.10.1957. The workman has produced the Xerox copy of his PAN card No. ATHPS2805D wherein his date of birth is mentioned as 19.10.1957. Workman has also submitted an Affidavit declaring his date of birth as 19.10.1957. In the Affidavit he has specifically mentioned that he had never appeared before the Apex Medical Board after his appointment for his age determination. He was once appeared before the M.O. of the colliery during the time of his Appointment when his age was assessed as 25 years as on 19.10.1982. He has also stated that he received his Appointment letter after the said medical examination and in the Appointment Letter his age was recorded as 25 years as on 19.10.1982. Subsequently, after his joining in employment he was issued Identity card and Service Record Excerpts by the management where his date of birth is correctly mentioned as 19.10.1957 based on the medical examination report and Appointment Letter. During his tenure of service, he never raised any dispute about his recorded age. He has given his thumb impression on good

faith in the "Signature/Thumb Impression column" of the Form 'B' Register during the time of his appointment as he is an illiterate person.

Sri Kashinath Shaw has been cross-examined by the management. He stated that he received Appointment Letter under the signature of competent authority of the management of E.C. Ltd. wherein his date of birth is clearly mentioned as 25 years as on 19.10.1982 and in the Identity Card and Service Record Excerpts also his date of birth is mentioned as 19.10.1957. The concerned M.O. who assessed the age of the concerned workman was not cross-examined. It is evident that the management by issuing a letter dated 23.12.1996 and asked Sri Kashinath Shaw to produce documents in support of his date of birth on the plea that his date of birth is not recorded in the "Date of Birth column" of the Form 'B' Register. I am surprised to observe that when there is entry in his Service Record Excerpts and Identity Card, how and why the Date of Birth column of the Form 'B' Register was kept blank by the management and why for this reason the workman concerned was asked to appear for age determination by the Apex Medical Board and his age was assessed as 50 to 55 years as per guideline of the Company and accordingly his date of birth was determined as 10.01.1945 which was subsequently entered in Form 'B' Register's column and computerized record of the company.

**Registrar General, High Court of Madras Vs. M. Manickam,** (2011) 10 S.C.R. page no. 325, Hon'ble Supreme Court has held as follows:-

*"The medical certificate produced in the instant case is described as "Age Proof Certificate" - it is very vague and unreliable - Whether or not any Radiological examination or any Ossification test was conducted is not reflected in the certificate - It only states that on the basis of physical examination and from appearance of the officer and on the basis his own statement the age was determined - The Doctor who was examined to prove the certificate also did not produce any text report or copy thereof - Thus, reliance can not be placed on the authenticity and validity of the said age certificate."*

I am in respectful agreement with the view propounded by Hon'ble Supreme Court that through the nature of the case is different but the ratio is fully applicable with the present reference. The report of doctor regarding age has not been submitted by the management. Doctor has not been examined by the management. It is not clear whether any Radiological Test was conducted for determining the age of the concerned employee. It is relevant to mention that the date of birth of the concerned employee was assessed by the M.O. of the colliery. There is no evidence that the date of birth of the concerned employee was previously recorded and the record was wrong.

In view of discussion above the Order passed by the management on 18/29.10.2004 in respect of superannuation of the concerned employee is set-a-side. Management is directed to record the date of birth of the concerned workman as 19.10.1957 instead of 18.01.1945. Management is further directed to re-instate in employment the concerned employee and to pay him @50% of the back wages from the date of imposed superannuation to the date of his resumption to duty.

## ORDER

Let an "Award" be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2015

**का.आ. 964.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के श्यामसुन्दरपुर कोलियरी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 77/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21/04/2015 को प्राप्त हुआ था।

[सं. एल- 22012/417/1998-आई. आर. (सीएम-II)]  
मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 30th April, 2015

**S.O. 964.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 77/1999) of the Cent. Govt. Indus. Tribunal-cum-Labour Court ASANSOL as shown in the Annexure, in the industrial dispute between the management of Shyamsunderpur Colliery of M/s. ECL, and their workmen, received by the Central Government on 21/04/2015.

[No. L-22012/417/1998-IR(CM-II)]  
MD. ZAHID SHARIF, Section Officer

## ANNEXURE

### BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

**PRESENT:** Sri Pramod Kumar Mishra,  
Presiding Officer

### REFERENCE NO. 77 OF 1999

**PARTIES:** The management of Shyamsunderpur Colliery, ECL  
Vs.  
Sri Aklu Shaw

**REPRESENTATIVES**

For the management: Sri P. K. Das.  
 Ld. Advocate, ECL

For the Union (Workman): Sri S.K. Pandey, Gen.  
 Secy., CMC

Industry: Coal State: West Bengal

Dated: 17.03.2015

**AWARD**

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) Govt. of India through the Ministry of Labour vide its letter No. L-22012/417/98-IR(CM-II) dated 07.07.1999 has been pleased to refer the following dispute for adjudication by this Tribunal.

**SCHEDULE**

"Whether the action of the management of Shyamsunderpur Colliery of Bankura Area of M/s. ECL in dismissing Sh. Akles Shaw, Underground Trammer, from services is legal and justified? If not, to what relief is the workman entitled?

Having received the Order No. L-22012/417/98-IR(CM-II) dated 07.07.1998 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 77 of 1999 was registered on 23.07.1999. Accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned. Both the parties appeared in the Tribunal, through their representative and filed their separate sets of written statement in support of their respective claims.

In brief compass, the case of the workman concerned as per his written statement is that Sri Akles Shaw was a permanent employee of M/s Eastern Coalfields Limited as U.G. Trammer. But he was deputed as a Security Guard by the management against his willingness. As such, such deputation is illegal as per the prescribed norms, rules and circular of the company. Sri Akles Shaw was charge sheeted *vide* charge sheet Ref. No. Shyam/PT/CS/96/3394 dated 02.09.1996 for alleged theft of coal. He was charged that on 31.08.1996 at about 8 p.m. one Tipping Truck No. WB-39-1524 located with coal was to be unloaded at the Moira Siding. But the above truck did not unload coal at the said siding but Sri Akles Shaw, the workman, signed the challan as a token of receiving the coal at the Siding. The workman was charged that the theft was committed by his connivance. After holding domestic enquiry, the management issued him Show Cause Notice granting only

three days time for his explanation. The Management dismissed the delinquent workman on dated 26/28.05.1997. According to the workman the dismissal is illegal as there was no such theft in the connivance. The workman has said that he should be reinstated with full back wages and with full incidental benefits.

On the other hand, the defense of the management in brief is that the incident is bad in the eyes of law and the offence is very serious and grave in nature. The management in his written statement has stated that Sri Akles Shaw, Ex. U.G. Trammer working as Security Guard was on duty at Moira colliery siding on 31.08.1996 in the second shift at about 8 p.m. One Tipping Truck No. WB-39 1524 was loaded with 8 (Eight) Metric Ton of Coal from colliery supposed to be unloaded at the Siding. Sri Akles Shaw was supposed to receive the same at the Siding. Sri Akles Shaw, although has signed the challan as a token of receiving the coal but it was found that the tipping truck had unloaded the coal elsewhere with the connivance of the concerned delinquent workman. For the above reason Sri Akles Shaw has been charge sheeted *vide* Charge sheet Ref. No. Shyam/PT/CS/96/3394 dated 02.09.1996 for the act of misconduct under clause 17(1)(a) and 17(1)(i) of the Model Standing Order applicable to him. After receiving the explanation of the concerned workman domestic enquiry was conducted and the delinquent employee had duty participated in the enquiry proceeding. In enquiry proceeding, the concerned workman was held guilty by the Enquiry Officer. The workman was given full opportunity to defend himself during the enquiry and to submit his explanation to the Enquiry Officer. After considering the enquiry report and explanation, the disciplinary authority passed the order of dismissal from service of Sri Akles Shaw.

The workman has filed copies of the enquiry proceedings and enquiry report. The Management has filed 3 (Three) documents in his documentary evidence. The workman has filed affidavit in his oral evidence. Sri Akles Shaw has been cross examined by the management. Management has not filed any oral evidence.

Sri S.K. Pandey, learned union representative appeared on behalf of the workman has argued that the workman was charge sheeted for his connivance during theft of coal for violation of 17(1)(a) and 17(1)(i). The concerned workman was a U.G. Trammer but he was authorized to do the job of a security guard which is a specialized job. Furthermore, there was no formal instruction or Office Order to do the job of security guard. The workman already gave written representation to the management in this connection *vide* his letter dated 02.03.1996 and 22.08.1996 for his deployment in his original place of work. Apart from performing the duty of security guard, the workman was assigned the duty of receiving coal at the siding which is not at all a duty of a security guard. The management cannot

depute a single person to perform jobs of two persons. Unloading of truck at some other place is not proved by the enquiry officer. There is no FIR regarding such incidence of alleged theft. Siding area is near about 1 K.M. away where there was frequent load-shedding. A single security guard cannot perform the duty of security guard as well as receiving of coal signing the challan. None of the management witnesses has alleged against the workman in enquiry proceeding. The Driver of the tipping truck who unloaded the coal was also an employee of ECL. but he was not charge sheeted for the alleged theft. The punishing authority did not apply his mind before passing the dismissal order.

On the other hand, Sir P.K. Das learned Advocate for the management has argued that as per Section 17(1)(a) of model standing order the management can direct any employee to perform any duty to meet up the crisis and to maintain the function of the colliery. The delinquent employee has committed theft in connivance with other which amount to a serious and grave misconduct for which dismissal from service of the said workman is justified.

I have heard the workman as well as management both the parties. It is not disputed from any corner that Sri Aklu Shaw was a permanent workman on the post of U.G Trammer in E.C.L. It is also admitted by both the parties that Sri Aklu Shaw was charge sheeted for his connivance in the alleged theft of coal and he was after domestic enquiry dismissed from E.C.L. The workman has filed a copy of enquiry proceeding. The Enquiry Officer has examined Sri S.P. Chakraborty, Sri K.N. Chowdhury, Sri C.R. Dasgupta, Sri RamnNarayan Mishra as management's witnesses. All these witnesses have stated in their evidence that Sri Aklu Shaw, Trammer was deputed to work as Security Guard at Moira Siding on 31.08.1996 near about 8 p.m. information establishes that the coal which was received by Sri Aklu Shaw was unloaded some where else rather than siding of the company. These witnesses have supported the statement of theft. After the enquiry report the disciplinary authority asked for the explanation of Sri Aklu Shaw regarding the enquiry report. The enquiry officer has recorded the statement of the witness in enquiry report, After enquiry report. on receiving the explanation of Sri Akli Shaw about the coal theft, the disciplinary authority has passed the dismissal order. It appears from the records that there was fullest compliance of principle of natural justice. The delinquent workman was given full opportunity not only to prove his defiance during the enquiry but also to cross examine the witnesses of the management.

Theft is a misconduct in Model Standing Order of ECL. So far as the relationship employee and employer is concerned, the employee has certain express and/or implied obligations to his employer. Involvement in serious offence like theft of the employee is serious and harmful to the interest of the employer for breaching and/or implied obligation by the employee concerned. Therefore, unless

it would be trifling nature it would constitute misconduct. Whereas the employee has entered into a position of 'servant' and if he does anything incompatible during faithful discharge of his duties to his master, the later has the right to dismiss him. The relationship of master and servant implies necessarily that the servant shall be in a position to perform his duty properly and faithfully. If the servant acts in contrary to the above, the master has absolute right to dismiss him.

The offence of theft committed by an employee, shows that he is dishonest and his suitability and reliability to continue in service may be affected by that reason. The act of theft or in connivance with Commission of theft is positive intention to cause loss to the employer. It is not a sheer negligence but intentional offence to put financial loss to the company which is strictly prohibited in the Model Standing Order. It is relevant to note that concerned delinquent employee was performing the duty of Security Guard. The safety and security of any company rests on the shoulder of Security Guard. If Security Guard himself commits theft or with his connivance theft is committed, this act is more than serious than theft committed by any other employee/workman.

The Cuddalore District Central Co-operative Bank Limited, Cuddalore Vs. Presiding Officer, Labour Court, Cuddalore, and another Writ Petition No. 29282 of 2003, D/B/6/2014 Lab. I.C. 651 (Madras High Court) the Hon'ble Madras High Court held that in this case the workman was dismissed from service on account of serious financial irregularities and misappropriation of fund. In domestic enquiry, the charges were proved beyond doubt. Hon'ble Madras High Court has held the setting-a-side, dismissal order is not appropriate. The Management witness has no reasons to falsely implicate the workman.

I am in respectful agreement with the view expressed by Hon'ble Madras High Court. In view of Hon'ble Madras High Court also the dismissal order is proper.

*"Workman may be transferred due to the exigencies of work or from one station to another, from one coal mine to another or from one establishment/department/section to another, within the same company or same holding company provided that the pay, grade and other conditions of service including continuity of services of the workmen are not adversely affected by such transfer and provided further that, if a workman is transferred from one job to another, the job should be of similar nature and such as he is capable of doing further that (i) except in case of emergency minimum notice of two weeks is given of such transfers, and (ii) reasonable joining time is allowed in case of transfers from one station to another."*

As per the above clause a workman can be transferred from one job to another of similar nature. In emergency no

prior notice is required to be given to the concerned employee. Therefore, I am not in agreement with the argument advanced by the union representative that deputation of delinquent workman to security guard is illegal or unjustified.

Lodging of FIR is required under Criminal procedure. But Departmental proceeding is a separate proceeding whereas, FIR is for criminal activities. The criminal act may give rise to both the proceedings *i.e.* Criminal proceeding as well as departmental proceeding and both the proceedings may proceed simultaneously. But it is not necessary that for departmental or domestic enquiry there must always be a criminal proceeding. It is not necessary that before conducting domestic enquiry for a misconduct of the delinquent workman there must always be a criminal proceeding also.

In HPCL Vs. Survesh Berry (Air 205 Supreme Court 1406) Hon'ble Apex Court held that "*Crime act of commission in violation of law or omission of public duty, the departmental enquiry is to maintain discipline in service and efficiency of public service.*"

Punishment of dismissal for act of theft by Security guard for wrongful gain is not disproportionate or harsh punishment. Every person is presumed to know the consequences of his act. In view of the matter, it is unjust and improper to set-a-side the order of dismissal imposed on the workman concerned.

### **ORDER**

Let an "Award" be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India. Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2015

**का.आ. 965.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 84/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21/04/2015 को प्राप्त हुआ था।

[सं. एल-22012/244/2004-आईआर (सीएम-II)]

मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 30th April, 2015

**S.O. 965.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 84/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, ASANSOL as shown in the Annexure, in the industrial dispute between

the management of Victoria West Colliery of M/s. BCCL, and their workmen, received by the Central Government on 21/04/2015.

[No. L-22012/244/2004-IR(CM-II)]

MD. ZAHID SHARIF, Section Officer

### **ANNEXURE**

### **BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL**

**PRESENT:** Sri Pramod Kumar Mishra,  
Presiding Officer

### **REFERENCE NO. 84 OF 2005**

### **PARTIES:**

The management of Victoria West Colliery, BCCL  
*Vs.*

Sri Gopal Bouri

### **REPRESENTATIVES:**

For the management: Sri P.K. Das, Ld. Adv.

For the union (workman): None

Industry : Coal State : West Bengal

Dated: 12.03.2015

### **AWARD**

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour *vide* its letter No. L-22012/244/2004-IR(CM-II) dated 12.07.2005 has been pleased to refer the following dispute for adjudication by this Tribunal.

### **SCHEDULE**

"Whether the action of the management of Victoria West Colliery of M/s. BCCL in dismissing Shri Gopal Bouri, U.G. Loader from services is legal and justified? If not, to what relief the workman is entitled?"

Having received the Order No. L-22012/244/2004-IR(CM-II) dated 12.07.2005 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 84 of 2005 was registered on 17.08.2005 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

Sri P.K. Das, Ld. Adv. appears on behalf of the management, but he has not filed his authorization till date. None appears on behalf of the union/workman.

Registered notices issued to both of the parties on 31.08.2005, 18.05.2009, 16.12.2011, 29.03.2012 and 15.10.2014. But the union neither appeared even for a single day since beginning nor took any step till date. It seems that the union is not at all interested to proceed with the case further. Since the workman neither appearing nor taking any step from the beginning, the case is closed. As such the case is closed a '**No Dispute Award**' may be passed accordingly.

#### **ORDER**

Let an "Award" be and same is passed as no dispute existing Send the copies of the order to the Govt. of India. Ministry of Labour, New Delhi, for information and needful. The reference is accordingly disposed of.

(2) Workman is not entitled to any relief.

12. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2015

**का.आ. 966.—**औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.इ.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 233/1991) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21/04/2015 को प्राप्त हुआ था।

[सं.एल-22012/500/1990-आई.आर. (सीएम-II)]

मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 30th April, 2015

**S.O. 966.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.233/91) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of SECL, and their workmen, received by the Central Government on 21/04/2015.

[No. L-22012/500/1990-IR(CM-II)]

MD. ZAHID SHARIF, Section Officer

#### **ANNEXURE**

#### **BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR**

No. CGIT/LC/R/233/91

Shri Narayan Biswas,  
S/o Late V.K. Biswas,  
Ex. Drill Operator, SECL,  
Q.No. M/117, Dipika Colony,

Gevra Project,  
Bilsapur.

Workman

*Versus*

Dy. General Manager,  
SECL,  
Gevra Project  
PO Gevra Project,  
Distt. Bilsapur (MP)

Management

#### **AWARD**

Passed on this 13th day of March, 2015

1. As per letter dated 19.12.91 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-22012/500/90-IR (C-II). The dispute under reference relates to:

"Whether the action of the management of Dy. General Manager, SECL, Gevra, Project in dismissing Shri Narayan Biswas from service w.e.f. 25.3.90 is legal and justified? If not, to what relief the concerned workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Workman is shown as IIInd party submitted statement of claim at page 3/1 to 3/6. Case of workman is that he was employed on post of drill operator in the colliery. His services were dispensed with as per order dtd 24-3-90. The dismissal order was issued by the Manager, Gevra project, SECL without authority. Chargesheet was issued to workman on 24-2-90. The charges related to alleged incident dated 23-2-90. Workman submitted report to police about said incident on 24-2-90. Workman was assaulted and suffered fracture in his right hand. He was also prosecuted for offence under Section 295, 325 of IPC. During pendency of criminal case, the enquiry was conducted against him to favour complainant Shri B.K. Sharma. Enquiry was conducted hastily. Criminal case was prosecuted on same facts. Management was committed to punish him. He was served with chargesheet one after another. IIInd chargesheet was issued on 4-3-90 but it was not served on him. He was not informed dates of the enquiry proceedings. Notice was not received by him. General secretary of Mazdoor Union submitted application for adjournment before Enquiry Officer on 16-3-90 requesting 15 days time. Thereafter he was not informed about the dates of enquiry proceedings.

3. Workman further submits that he had filed civil suit before Civil Judge Class II Khatghora for injunction. Notice in said suit was received by management on 24-3-90. IIInd, chargesheet was issued on 4-5-90. It is reiterated that enquiry was not conducted properly following principles of natural justice. Ex parte enquiry was conducted to pressurize him. Witness of management were not cross-

examined. On such grounds, workman prays for his reinstatement with back wages.

4. IIInd party filed Written Statement at Page 6/1 to 6/8. Management submits that workman was appointed on 26-10-85 as Drill Operator Cat-D in Gevra Project. Shri D.K. Sharma was working as Sr. Under Manager in same project. On 23-2-90, Shri D.K. Sharma complained to management in writing that the workman was found near Key P&S 95 shovel where as he was assigned duty at RECP-05. On his asking about it, workman abused and assaulted inflicting injuries at his nose, legs and eye. Incident was reported to police. Criminal case was prosecuted against workman. Chargesheet was issued to workman, Enquiry was conducted on 14-3-90, 16-3-90, 21-3-90. Workman did not appear before Enquiry Officer on any of the dates despite of public notice was issued for enquiry fixed on 21-3-90 enquiry was proceeded ex parte. 7 witnesses of management were examined. Evidence of management's witnesses was closed by Presenting Officer. Enquiry Officer submitted his findings that charges against CSE were proved. Evidence of witnesses was corroborated by Medical Report. FIR that workman had abused and caused grievous injury to co-worker Shri D.K. Sharma. It is reiterated that after receiving report of Enquiry Officer, Disciplinary Authority agreed with findings and imposed punishment of dismissal. Management further submits in enquiry is found vitiated for any reasons, management be permitted to prove misconduct in Court. IIInd party prays that order of dismissal of workman is proper and legal.

5. Management submitted rejoinder at Page 7/1 to 7/6 reiterating its contentions in Written Statement.

6. As per order dated 2-5-06 by my predecessor, enquiry conducted against workman is found legal.

7. Considering pleadings on record and order on preliminary issue, the point which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Affirmative
(ii) If not, what relief the workman is entitled to?	Workman is not entitled to any relief."

## REASONS

8. In view of enquiry conducted against workman is found legal, points raised by my learned counsel for workman in its written notes of argument pertaining to legality of enquiry cannot be considered. Notes of arguments refers to criminal case prosecuted against workman was withdrawn by State of MP. Complainant was not referred for medical examination, medical report was not produced before Enquiry Officer. The statements of witnesses of management were not consistent with injuries suffered by management's witnesses Shri D.K. Sharma. The evidence of witnesses cannot be relied.

9. Learned counsel for management Shri A.K. Shashi submits enquiry is found legal. Criminal case was withdrawn. The evidence of management's witness is sufficient to prove charges against workman. Workman had admitted occurrence of incident. He had not filed FIR. Charges are proved. Dismissal of workman is proper. Considering tenour of argument, evidence in Enquiry Proceedings needs to be considered. On careful perusal of evidence in Enquiry Proceedings, it is found that management examined witnesses on point of service of notice of enquiry to the CSE and witnesses to incident. Shri D.K. Sharma complainant in the case has stated on 23-2-90, when he was standing near P&S 95, CSE found louting near P&S-95. He was allotted duty at RECP-05. On his enquiry workman has abused in indecent language. The language uttered by workman in name of his mother, sister are recorded in his statement. He was also assaulted by CSE inflicting injury on his left eye, nose, lower lip, blood was coming out from his injury. He was referred for medical examination. Witness No.4 Narendra Kumar in his statement says CSE had inflicted injuries to Shri D.K. Sharma witness Bhien Singh also corroborates evidence of Shri D.K. Sharma, Narendra Kumar that he had seen one person inflicting Shri D.K. Sharma. He had separated them, blood was oozing from nose of Shri D.K. Sharma. In his further evidence, on questions by management representative the witness says that on his enquiry Foreman told that the name of person inflicting injury was Biswas. Management's witness No.6 M.S. Johar in his evidence says on 23-2-90, CSE Narayan Biswas was abusing indecent language to Shri D.K. Sharma. Right eye of Shri D.K. Sharma was swollen. He had seen CSE at 5 PM at point of Drill No. RECP-05. Witness No. 6 Shri R.P. Jaiswal in his statement says that he had come by truck, he had seen Narayan Biswas struggling with Shri D.K. Sharma, blood was oozing from face of Shri D.K. Sharma. The evidence of management's witness is not identical on all points. Witness No.8 T. Mehto in his statement says that CSE Narayan Biswas told him that he had beaten Shri D.K. Sharma. The scope of judicial review cannot be exercised to re-appreciate evidence. The decree of proof in domestic enquiry is not similar to the burden of proof in similar case. The evidence of management's witness is sufficient to

prove charges alleged against workman therefore I record my finding in Point No. 1 in Affirmative.

10. In his notes of arguments, counsel for workman has raised objection that punishment order was issued by Manager who was not competent authority. In reply to it, learned counsel for management submits after receiving report of Enquiry Officer, punishment of dismissal was approved by Competent Authority and order of punishment was issued by Manager cannot be said illegal. No evidence is produced on record about Competent Authority allowing the workman. Therefore argument on point cannot be accepted. As per my finding against Point No.1, charges proved against workman are of grave nature inflicting injury to Shri B.K. Sharma who was Sr. Official of CSE. The publication of dismissal of service cannot be said excessive or disproportionate. No interference is called in the order of dismissal. For above reasons, I record my finding in Point No.2 in Affirmative.

11. In the result, award is passed as under:—

- (1) The action of the management of Dy. General Manager, SECL, Gevra Project in dismissing Shri Narayan Biswas from service w.e.f. 25.3.90 is legal and proper.
- (2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2015

**का.आ. 967.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ़-सी-आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 191/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21/04/2015 को प्राप्त हुआ था।

[सं. एल-22012/149/एफ/1993-आईआर (सी-II)]

मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 30th April, 2015

**S.O. 967.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 191/98) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management Food Corporation of India, and their workmen, received by the Central Government on 21/04/2015.

[No. L-22012/149/F/1993-IR(C-II)]

MD. ZAHID SHARIF, Section Officer.

#### ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL CUM LABOUR COURT,  
JABALPUR**  
**No. CGIT/LC/R/191/98**

General Secretary,  
Bhartiya Kamgar Mahasangh,  
Nandini Chowk Ward No. 35,  
Distt. Rajnandgaon (MP) Workman/Union

#### Versus

District Manager,  
Food Corporation of India,  
Durg (MP) Management

#### AWARD

Passed on this 12th day of March, 2015

1. As per letter dated 19-8-98 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No.L 22012/149/F/93-IR(C-II). The dispute under reference relates to:

"Whether the demand of the Union that 112 Railway Siding Contract Labourers should be treated at par with depot labourers with retrospective effect from 16-3-90 is justified? If so, what benefit are the said workmen entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party Association of workers submitted statement of claim at Page 2/1 to 2/3. Case of 1st party workman is that 112 contract labours working at Railway Siding, one of the labour Baldev Mishra died. His widow claimed employment on compassionate ground as per application dated 18.12.96. She had claimed that 3 minor children and mother-in-law were dependent on her. Her application was not considered. Names of 111 labours relating to dispute is submitted along with statement of claim. The Ist party Association submits that all the 112 labours were working as contract labours. Those labours were sometimes working in godown and sometimes at Railway siding. They were doing work of loading, unloading of food grains at both the points. The contract system was abolished by 2nd party. Work performed by labours engaged by contractor and departmental labours was similar therefore both kind labours were entitled to similar benefits. In view of Section 20(2) and 21 of Contract Labour (R&D) Act. That Ist party Association had given notice dated 27.9.96 to 2nd party under Equal Remuneration Act, 1976. Any action was not taken on said notice. That all 112 labours shown in the annexure are entitled to similar benefits from 16.3.90. Ist party Association raised dispute pertaining to the labours working on Railway Wagon siding under control of 2nd party were doing the work of loading in the godown directly and not at Railway wagon siding. Any representation dated 11-11-97 submitted to 2nd party 41 labours were having their surname as Paswan out of the State. That 87 employees junior to workman were regularised giving benefit of permanent employee total 158 labours were regularised. 28 labours shown in Annexure A were

not regularised. Junior to them were regularised by IIInd party. It is submitted that consequent to abolition of contract system in Rajnandgaon depot, the permanancy benefit was given excluding 112 labours shown in annexure A. The labour shown at Sl. No. 98 to 125 were working prior to 1982 were regularised. It is reiterated that the junior employees are regularised and Ist party workman are denied benefit of regularization. The labours at Sl. No. 228 to 270 were regularised even they did not worked for a single day. The 111 employees shown in Annexure A are unemployed. IIInd party as per circular dated 5-11-94 was extracting work of unloading 90 bags per day to avoid the damage charges. It is submitted that they are entitled to status of departmental labours the benefit of equal wages as per seniority. On such ground, Ist party Association is praying for regularization of 111 labours as the labours shown in Annexure B are regularised.

3. IIInd party filed Written Statement at Page 15/1 to 15/10 opposing claim of Association. Preliminary objection is raised that the dispute is referred at the instance of Bhartiya Kamgar Mahasangh which came in existence in October 1991. Prior to 1991, said Union was not in existence. Workers connected with the dispute were working with contractors as contract labours since 1980. From 1980 to 1991, any payment was not placed before the management of FCI claiming parity with the depot labours. That those labours were never employed by FCI. Govt. of India without taking any consideration demand of Union regarding contract labours be treated at par with the departmental labours. The reference is referred without application of mind. Such reference is not tenable.

4. As per terms of reference demand of Union pertains to 112 labours working at Railway siding should be treated at per with depot labours. Workers neither given any particular nor given details of the contractors with whom they were working. The Union has not filed any document in support of their claim working with contractors. Union has not given particulars regarding date of birth, age photo, period of working of contractors. The names of contractor are not disclosed. It is submitted that loading and unloading process of wagon is not under control of FCI. Vide order dated 11-10-96, it was open for FCI to transport foodgrains making their own arrangements. If any contractor engage some labours at Rail Heads and works for various department, it cannot be said that those labours are contractors of FCI. The contractors are carrying loading, unloading work of various departments. They are not impleaded as party. That 112 workmen are not covered under Section 2(s) of ID Act.

5. It is submitted that FCI is constituted as per Act of 1964. It deals with import, procurement, storage throughout the country. FCI has office, depots through out the country. It is undertaking of Government of India. FCI functions

under directions and instructions issued by Govt. of India FCI was appointing contractors for handling transport work at various depots. Such practice was continuing till 1989. Contractors were bring labours from open market of their choice considering the suitability. The wages was paid by FCI to such contractors as per quantum of work. There is FCI workers Union ooperating in IIInd party functioning more than 90% membership. Said Union has the power to safeguard interest and welfare of workers. During 25.7.89 to 24.7.91, M/S Universal Transport was engaged at Rajnandgaon depot for engaging transportation. Labours have resorted to strike. The work of Rajnandgaon depot was paralised because of strike. Therefore FCI introduced mate system. The agreement was arrived between Union and management on 1.4.91. In pursuance of said agreement, 158 workers working with mate were regularised. After regularization of those 158 workers whose names given in Annexure A were not disclosed. IIInd party reiterates that works shown in Annexure A were not working with FCI. There is no employer employee relationship. Those workers are not entitled to regularization with IIInd party. It is denied that the contractor's workers and departmental workers were performing identical jobs. FCI is not principal employer of those labours. IIInd party is not liable for any consequences under Section 20(2), 21 of CL (R&A) Act. On such ground, IIInd party submits that Ist party workmen are not entitled to any relief.

6. Ist party workmen filed rejoinder at Page 17 reiterating their contentions in statement of claim contending that 112 labours are entitled to similar treatment as labours working in the depot.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the demand of the Union that 112 Railway siding Contract Labourers should be treated at par with depot labourers with retrospective effect from 16.3.90 is justified?	In Negative
(ii) If not, what relief the workman is entitled to?	Workmen are not entitled to any relief.

## REASONS

8. The terms to reference pertains to demand of the Union that 112 Railway siding contract labours would be treat at par with depot labours with retrospective effect from 16.3.90. The dispute is referred as per order dated 19.08.98. IIInd party has denied employer employee

relationship. It is further contended that Railway siding is not under its control. Railway siding is property of Indian Railway. Copy of agreement dated 12.4.91 is produced at Page 25/11. Clause II(b) provides—"the workers working on piece reated basis were allowed benefit of exgratia bonus, CPF Compensation under Workmen Compensation Act, Gratuity, Attendance allowance, National Paid Holidays, Ist Aid etc. the said agreement was entered between FCI Workers Union and the management. Ist party Union was not party to said agreement. The terms of reference pertains to employees working at Railway Siding claiming similar benefits of depot labours.

9. Identical affidavit of evidence are filed by Ist party of Hiraman Yadav, Nirha Jabbar, Kripa Singh, Naresh Sahu, Kailash, Makhanlal Yadv, K.G Usahu, Shyamlal Sahu, Satish Kumar, Sawant Ram, Shyamlal Sahu, Santosh Kumar, Prakash Yadv, Bhodaram, Yogotram, Dhanuram, Satish Kumar Yadav, Nila Sahu, Vishnuram, Dehararam, Manoj Kumar, Santosh Kumar, Lakanram, Anandram, Pitaram, Ramesh Kumar, Vishwanath, Nandan Sahu, Bisran Yadav, Ramkishan Yadav, Pallyram and other labours. All of them have stated that they were doing work of loading unloading since 1980. Without any notice, they were discontinued. That due to good crops, work of IIIrd party was increased. The labours from other states were discontinued. In their cross-examination most of those labours says they were doing the work of loading unloading at Railway siding under different contractors. To be precise, Kripa Ram Gond in his cross-examination says he was working under contractor but he was not knowing his name. He was discontinued by contractor. I Card was not given to him. Naresh Sahu, Kailash Ram, Keju Sahu, Paltan Ram, Shyamlal, Satish Kumar, Sawant Ram Sahu, Shyamlal Sahu, Santosh, Annu Bai, Balaram and many others not appeared for their cross-examination. Shri Makhanlal in his cross says he was working in Railway siding during 1980 to 1990. wages were paid by contractor. He was discontinued by FCI. Shri Prakash Yadav in his cross says he was working with contractor Girish Agrawal. He was discontinued in 1990. Bhodaram in his cross says he was working in Railway siding. He was also working in FCI. The wages were paid by contractor. FCI did not give him appointment letter. Jokad Ram Satnami says he was working with contractor but could not tell his name. Dhanuram also deposed that he was working with contractor. Almost all witnesses of Ist party workmen who were subjected to cross-examine admitted that they were working under contractor. Wages were paid by contractor. It is surprise to say that Ramkishan Devidas also says that they were working under contractor. There is absolutely no evidence that all those 111 workers were working with contractor engaged by FCI. At point of Railway siding, FCI had any kind of control of the labours engaged by the contractor appointed by IIInd party. Thus

employer employee is not established. It is also established that those 111 workers were engaged by contractor appointed by 1st party at Railway siding. In absence of such evidence, employer employee relationship could not be established. Provisions of Section 20(2), 21 of CL(R&A) Act cannot be invoked.

10. Evidence of management's witness Parth Shah and Vijay Kumar Sonkusare on affidavit supporting contentions of IIInd party is filed. It is clear that FCI had engaged contractors Shri Girish Kumar, Pradeep Kumar etc. for carrying transport handling work at Rajnandgaon Depot. Workmen were not engaged by such contractors for carrying transport handling work at Railway Siding. Shri Vijay Kumar in his cross-examination says that contract was given by FCI management for engaging labours by mate. Mate system was abolished around 1990. The notification about regularization of labours is not produced. He has denied that 113 labours were working at Rajnandgaon depot. Railway siding gets rack at the FCI at the time the goods are unloaded. The witness of management claimed ignorance after departmentalization of contract labours, what post was given to them. He claims ignorance whether after discontinuing those 113 labours, new labours were employed at Rajnandgaon depot. The question asked in cross-examination to management's witness all those 113 labours in Rajnandgaon depot are in connection with the terms of reference itself. The terms of reference pertains to parity of pay and other benefits to the employees working at Railway siding. The pleading and evidence are not consistent with the terms of reference.

11. The management's witness Shri Parth Shah in his cross-examination denied that the goods were loaded in Railway Wagon from FCI godowns. He denied suggestion that FCI was engaging outside labours for such work. Though Ist party has produced documents pertaining to loading, unloading details, 1st party has not adduced any evidence to prove those documents. From reasons discussed above, it is clear that the pleadings and evidence of 1st party are not consistent with terms of reference claiming parity of benefits of 111 employees shown in Annexure-A. The benefits given under agreement dated 12-4-91 discussed above cannot be extended to those employees as they were not engaged by the contractors engaged by FCI. For above reasons, I record my finding in above point in Negative.

12. In the result, award is passed as under:-

(1) The demand of the Union that 112 Railway siding Contract Labourers should be treated at par with depot labourers with retrospective effect from 16-3-90 is not legal and proper.

(2) Ist party labours are not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2015

**का.आ. 968.**—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/अमन्यायालय नं. 2, चंडीगढ़ के पंचाट (संदर्भ संख्या 42/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21/04/2015 को प्राप्त हुआ था।

[सं. एल-22011/14/2010-आईआर (सीएम-II)]  
मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 30th April, 2015

**S.O. 968.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 42/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, Bright Security Service, Food Corporation of India, and their workmen, received by the Central Government on 21/04/2015.

[No. L-22011/14/2010-IR(CM-II)]

Md. ZAHID SHARIF, Section Officer

#### ANNEXURE

#### IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

**Present :** Sri Kewal Krishan, Presiding Officer

**Case No. I.D. No. 42/2010**

Registered on 28.6.2010

Sh. Nanak Chand S/o Sh. Angan Ram, Gali No. 2,  
Bhagnavpura, T-Abohar, City Abohar, Distt. Ferozepur,  
Punjab .....Petitioner

*Versus*

The District Manager, Food Corporation of India, District Office, Malwal Road, Ferozepur City, Punjab.

Brig. Jaswant Singh Sandhu, Bright Security Services, 38, Rani Ka Bagh, Amritsar, Punjab.

The General Manager, Food Corporation of India, Regional Office, Punjab Region, Sector 31-A, Bay No. 34 to 38, Chandigarh, Punjab.

...Respondents

#### APPEARANCES:

For the workman : Sh. Harpal Singh, Adv.

For the Management : Sh. N. K. Zakhmi, Adv.

#### AWARD

Passed on 15.10.2014

Central Government vide Notification No. L-22011/14/2010 [IR(CM-II)] dated 14.6.2010, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

1. "Whether the contract between the management of FCI, Ferozepur and the Contractor namely M/s. Bright Security Services Ltd. is sham and bogus?
2. Whether the demand of Sh. Nank Chand S/o Sh. Angan Ram for reinstatement with full back wages and to treat him as regular employee of the FCI is legal and justified?
3. To what relief is the workman concerned entitled?"

In response to the notice, the workman appeared and submitted statement of claim that he was appointed on 1.5.1995 as Security Guard at FCI Godown, Abohar, where he worked till 10.8.1998 when his services were terminated illegally. He has further pleaded that his attendance was marked by the staff of the FCI who used to pay him salary. The disciplinary action and control also vest with the FCI. That the termination of his services is illegal and he be reinstated in service with back wages.

Respondent management filed written reply pleading that the work of Security Guard is not of a regular nature and it was only seasonal which was being given by the management to the contractor to provide labourer. It was given to different agencies and it was given to Bright Security Service, Amritsar in the year 1991. FCI used to make payment to the contractor which in turn was making the payment to the labourers. That the workman is not an employee of the FCI.

Parties were given opportunities to lead evidence.

In support of his case, the workman appeared in the witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand the management examined Rahul Chandan who filed his affidavit reiterating the stand taken by the respondent management in the written statement.

I have heard Sh. Harpal Singh, counsel for the workman and Sh. N.K. Zakhmi, counsel for the management.

It was contended by the learned counsel for the workman that workman was appointed by the FCI who used to pay him salary and his attendance was also marked by the employees of the FCI who was also deducting Rs. 100/- every month from his pay and as such, he is an employee of the FCI who used to exercise full control over

him and the contract entered into between the FCI and the Bright Security Service is a sham transaction.

It may be added at the outset that no appointment letter was issued to the workman and he was not engaged as per any Rules and Regulations of the management for recruitment. On mere assertion of the workman, it cannot be said that he was an employee of the respondent management. He did not produce or prove any record on the file that his presence was ever marked by the employees of the respondent management and it also used to pay him any salary or was exercising any control over him. When he was not paid any salary by the management, it cannot be said that he was ever an employee of the respondent management. No doubt, the Court can see whether the contract entered into between the management and the contractor is a sham transaction, but no circumstance has come on the file to establish that contract was just a camouflage and the workman was actually employed by the FCI. Thus, in the absence of any cogent and convincing evidence, it cannot be held that workman was ever appointed by the FCI. Being so, it cannot be said that the contract between the agency and the respondent management was a sham transaction and that too without the impleading of the agency as a party in the reference and the workman is not entitled to any relief.

In result, the reference is answered that the contract between the respondent management and the contractor was not a sham transaction and since he was not an employee of the respondent management, it cannot be said that his services were terminated by it and he is not entitled to any relief and the reference is answered accordingly.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2015

**का.आ. 969.—**—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.एस. एण्ड सी.आर.के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकारण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 891/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21/04/2015 को प्राप्त हुआ था।

[सं. एल-42012/271/2001-आईआर (सीएम-II)]  
मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 30th April, 2015

**S.O. 969.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 891/2005 of the Cent. Govt. Indus. Tribunal-cum-Labour Court No 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Central Soil & Conservation Research

& Training In and their workmen, received by the Central Government on 21/04/2015.

[No. L-42012/271/2001-IR(CM-II)]  
Md. ZAHID SHARIF, Section Officer

#### ANNEXURE

#### IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

Present: Sri Kewal Krishan, Presiding Officer.

#### Case No. I.D. No. 891/2005

Registered on 12.9.2005

Workmen of Central Soil and Water Conservation, Research and Training Institute Research Centre, Chandigarh.

Petitioners

*Versus*

The Officer Incharge, Central Soil & Water Conservation Research & Training Institute, Research Centre, Sector 26, Madhya Marg, Chandigarh.

Respondents

#### APPEARANCES

For the workman

Sh. Ashwani Bakshi Adv.

For the Management

Sh. S.K. Gupta Adv.

#### AWARD

Passed on 14.10.2014

Central Government *vide* Notification No. L-42012/271/2001 [IR(CM-II)] dated 12.5.2003, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the 20 workmen who were taken back in the service as per settlement dated 4.4.1988 arrived at between the union and management are entitled back wages and benefits of the continuity of the service? If so, to what relief they are entitled to?"

In response to the notice, the workmen submitted statement of claim pleading that they were working as daily wage workers with the respondent management and their services were terminated on 21.12.1987. They raised a dispute and a settlement took place on 4.4.1988 and all the 20 workmen were taken on duty. As per settlement, the continuity of service and back wages was to be referred to the Labour Court. The workmen were taken on duty in pursuance of the settlement dated 4.4.1988. That they are entitled to continuity of service and full back wages for the period they remained out of service.

Management filed written reply pleading that it is not an 'industry' and no finding was recorded during the settlement that their termination was illegal. It is pleaded that workmen were taken on duty in compliance of the settlement but they are not entitled to continuity of service and back wages as the order of the termination was never held illegal.

Parties were given opportunities to lead their evidence.

Munna Lal appeared in the witness box and filed his affidavit supporting the case of the workmen.

On the other hand the respondent management has examined Sh. S.S. Chauhan and Tirlok Singh, who filed their respective affidavits on the line of the defence taken by the respondent management in the written statement.

I have heard Sh. Ashwani Bakshi, counsel for the workman and Sh. S.K. Gupta, counsel for the management and also perused the written submissions.

It is not denied that the workmen were working as daily wage workers with the respondent management and their services were terminated on 21.12.1987. When the dispute came before the Assistant Labour Commissioner, a settlement was effected on 4.4.1988 and as per this settlement, the photocopy of which is on the file, the workmen were to be re-employed in the same capacity and both the parties agreed that the issue of wages and continuity of service be referred to the Tribunal mutually. It is also not disputed that the workmen were reinstated in service in pursuance of the settlement. Now the workmen claims wages for the period they remained out of service and continuity in service. It was submitted that since the workmen were reinstated by the management in pursuance of the said settlement and therefore the only consequence is that they are entitled to back wages and continuity of service which the management refused to grant to the workmen.

Suffice it to say that the workmen were retrenched from service on 21.12.1987. During the settlement, the respondent management only agreed for their re-employment as per settlement dated 4.4.1988. Though it is mentioned in the settlement that parties will agitate the matter of back wages and continuity of service before the Tribunal. But the workmen are not entitled to the said benefits on the basis of the settlement. There is nothing on the file that their retrenchment was illegal at any point of time and they can be given the back wages and continuity of service only if their services were terminated illegally. Since the illegality of the retrenchment of the workmen is not proved on the file, they are not entitled to the benefits as claimed by them.

Being so, it is held that the workmen are not entitled to the back wages and benefits of continuity of service and

they are not entitled to any relief and the reference is answered accordingly.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2015

**का.आ. 970.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकारण/श्रम न्यायालय, जबलपुर में पंचाट (संदर्भ संख्या 107/07) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21/04/2015 को प्राप्त हुआ था।

[सं. एल- 22012/25/2001/आईआर (सीएम-II)]

मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 30th April, 2015

**S.O. 970.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 107/07 of the Central Govt. Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Western Coalfields Ltd., and their workmen, received by the Central Government on 21/04/2015.

[No.L-22012/25/2001-IR(CM-II)]

Md. ZAHID SHARIF, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/107/07

Shri Ratiram Chourey,  
S/o Shri Imrat,  
R/o Ward No. 5, Patel Nagar,  
Near Hand Pump Jhuggi,  
Pathakhera,  
Tehsil Ghodadongri, Betul.

...Workmen

*Versus*

General Manager  
Western Coalfields Ltd.,  
PO Pathakhera,  
Betul

...Management

#### AWARD

Passed on this 19th day of January, 2015

1. As per letter dated 23-10-07 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, as per Notification No. L-22012/25/2001-IR(CM-II). The dispute under reference relates to:

"Whether the action of the management of M/s WCL in terminating the services of Shri Ratiram Chourey is legal and justified? If not, to what relief the workman is entitled to?"

2. After receiving references, notices were issued to the parties. Ist party workman submitted statement of claim at Page 3/1 to 3/2. Case of workman is that in 1981, he was engaged in PK-2 mines. The employees similarly engaged working under contractor were working on saw mill. They were allowed regularization. The services of workman were terminated without regularizing. The services of workman were terminated without regularizing him. Workman raised dispute before authorities. IIInd party had contented that the workman was not working on its establishment. The conciliation proceedings failed. Government fund dispute was not fit for making reference. Workman filed Writ Petition No. 1803/03. As per judgement dated 24-4-07, Government was directed to make reference of his dispute.

3. Workman submits that he was working for 12 years from 1981 to 1993. Without giving opportunity of hearing, his services were terminated is illegal. Termination of service is in violation of principles of natural justice. Workman submits that he should have been regularized as other workmen with contractor were regularized. Workman prays for his reinstatement with backwages.

4. IIInd party filed Written Statement. Management had denied employment of workman. In this statement of claim, workman has pleaded that he was engaged by contractor. That dispute is raised by workman after 19 years is belated. From Writ Petition filed by workman 1803/03, the reference is made by the Government. While making reference order, it was observed that Respondent No. 1 was given liberty to raise all questions before Tribunal. That dispute raised by workman beyond 7 years is not tenable. IIInd party has referred to ratio held in various cases.

5. It is further submitted that Coal India is a company of Govt. of India. The service conditions of employees are covered by NCWA. Coal India has recruitment policy. The requisition is required to be sent to the Employment Exchange. The Committee selects the candidates holding interviews. The management is entitled to get miscellaneous casual nature of work executed through contractors. The contractors were temporary and casual in nature. For this management invites tender from the contractors. The lowest bidder is awarded the contract. The management floated the tender dated 10-9-81 for coal and stone/shale removal from MPEB crusher. The termination of employees engaged by contractor was with contractor. IIInd party was not concerned with termination of contractor employees. All adverse contentions of workman are denied. It is submitted that workman was working through contractor, he cannot be regularized. On such contention, IIInd party prays for rejection of claim.

6. Considering pleading on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of M/s WCL in terminating the services of Shri Ratiram Chourey is legal and justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

## REASONS

7. Workman has filed affidavit of his evidence covering his contentions in statement of claim. That from 1981, he was working in PK-2 Mines. Other employees engaged by contractor were regularized. His services were terminated without hearing, he was not regularized by the management. contractor Ramjas has filed his affidavit. Workman in his further evidence proved documents Exhibit W-6, W-7. In his cross-examination workman says he is not educated. He was working under contractor Ramjas. He was doing work of removal of stones and coal. His wages were paid by contractor. He worked under contractor. Other workers were also regularly working like him. He further says that he had not retained copy of W-6/1, W-7/1 submitted to WCL. He was paid weekly wages. WCL was making payment to contractor. He denies that documents produced by him are fabricated/bogus.

8. From evidence of workman, it is clear that he was working under contractor. The terms of reference relates to legality of termination of services of workman by IIInd party. The reference does not relate to regularization of services of workman like regularization of services and other workers with contractor. The substance of the relief claimed by workman for regularization is beyond the terms of reference. Workman has pleaded that termination of his service is illegal. The evidence of workman and witness Lakhlanlal is clear that they were working under contractor, contractor is not made party. It is not case of workman that the contract was sham and bogus and he was employee of the Principal employer i.e. IIInd party.

9. The documents produced on record Exhibit 7, 7/1 are affidavits of the contractor Ramjas. He was not subjected to cross-examination. Management has produced tender notice M-1 for removal of coal, stone/shale dated 5-9-81. Exhibit M-2 is letter issued to contractor contending several terms and conditions. Exhibit M-3 is letter to General Manager sent by Personal Manager. Exhibit M-4 is also letter by Dy.Chief Personal Manager to General Secretary of Union that demand for regularization of Narayan could not be considered. Exhibit M-5 is letter given

by Dy. Chief Personal Manager denying demand for regularisation in proceeding before RLC.

10. Management's witness Shri R.D.Tuddu supported contentions in Written Statement filed by management of IIInd party. That workman was not engaged by IIInd party. The work was awarded to Ramjas contractor. Management's witness in his cross-examination denies sln,g that workman was working with IIInd party. He claims ignorance whether workman was working under contractor. In view of admission in cross-examination of workman, he was working under contractor, the contractor is not impleaded as party. There is no pleading or evidence that the contract was sham and bogus or the workman was employ of IIInd party. Claim of workman cannot be upheld.

11. Learned counsel for IIInd party Shri A. K. Shashi has relied on catin of cases 2007(1) SCC-408, AIR 2007-SC-1166, 2001-1-SCC-424, 2004-II-LJJ460, 2000-1-LJ-561, 1998-LAB.I.C.1702. I have gone through the ratio held in all those cases, detailed discussion in all those cases is not necessary. Workman has failed to plead and prove that contract was bogus and he was employee of IIInd party. In absence of such pleading and proof, it cannot be said workman was terminated by IIInd party. Employer-employee relationship is not established between parties therefore I record my finding that it is not proved that workman was terminated by IIInd party.

12. In the result, award is passed as under:—

- (1) The action of IIInd party in terminating the services of Shri Ratiram Chourey is not proved illegal as workman was not engaged or terminated by IIInd party.
- (2) Workman is not entitled to any relief. Parties to bear their own costs.

13. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B.PATLE, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2015

**का.आ. 971.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एससीसीएल के प्रबंध तंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/अमन्यालय, गोदावरीखन्नी के पंचाट (संदर्भ संख्या 12/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/04/2015 को प्राप्त हुआ था।

[सं. एल-22013/1/2015-आईआर (सी-II)]  
मो. जाहिद शरीफ अनुभाग अधिकारी

New Delhi, the 30th April, 2015

**S.O. 971.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government

hereby publishes the award of the Indus.Tribunal-cum-Labour Court, Godavarikhani (IT/ID/12/2010) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workmen, which was received by the Central Government on 28/04/2015.

[No. L-22013/1/2015-IR(C-II)]  
Md. ZAHID SHARIF, Section Officer

#### ANNEXURE

#### BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GODAVARIKHANI.

**Present :** SRI G.V.KRISHNAIAH,  
Chairman-cum-Presiding Officer.

Thursday, on this the 10th Day of July, 2014

#### INDUSTRIAL DISPUTE No.12 OF 2010

#### Between:—

Erukala Rajaiah. Ex-Coal Filler, EC No. 0916471, S/o. Mallaiah, age 42 years, C/o. B. Amarender Rao, Advocate, Raghupathi Nagar (Ganganagar), P O: Godavarikhani, District Karimnagar — 505 209, Andhra Pradesh.

... Petitioner

-And-

1. The Superintendent of Mines, SC Co., Ltd., GDK, No.6-B Incline, PO. Godavarikhani, District Karimnagar-505 209, Andhra Pradesh.
2. The General Manager, S.C. Co., Ltd., Ramagundam Area— 1, PO. Godavarikhani, District Karimnagar— 505 209, Andhra Pradesh.
3. The Chairman and Managing Director, S.C.Co., Ltd., P.O. Kothagudem, Khammam District, Andhra Pradesh.

... Respondents

This Industrial Dispute petition coming on before me for final hearing in the presence of Sri B.Amarendar Rao, Advocate, for the petitioner and Sri D. Krishnamurthy, Advocate, for the respondents, and the matter having stood over before me for consideration till this date, the Court passed the following:—

#### AWARD

1. This is a petition filed U/Sec.2-(A) (2) of the Industrial Disputes Act, 1947 by the petitioner seeking re-instatement with back wages. The petitioner worked as Coal Filler in the respondent company. He was removed from service on the ground of absenteeism.

2. According to the petitioner he joined in the company in the year 1987 and worked without any adverse remarks

and had put in more than required 100 musters. It was only in the year 2003, because of severe ill-health, domestic problems and demise of his family members petitioner had put in 93 musters. The petitioner underwent medical treatment in the respondent company hospital, referral hospitals and private hospitals. However without considering the health condition of the petitioner, respondent issued charge-sheet, dt. 22.2.2004 alleging habitual absenteeism. The petitioner gave his explanation, but a false enquiry was conducted on 18.6.2004 and after issuing show-cause notice, on 16.4.2004 petitioner was removed from service. The punishment imposed by the respondent is shockingly disproportionate and amount to economic death of the petitioner. Hence the petitioner may be reinstated with continuity of service and other consequential benefits and full back wages.

3. The respondent filed counter stating that petitioner raised a dispute before the Asst. Labour Commissioner (Central), Mancherial vide conciliation proceedings No.1/14/2005, dt 10.5.2005 through Secretary, SCMLU (INTUC) and the same is ended in failure and referred to Central Govt. Industrial Tribunal-cum-Labour Court, Hyderabad and it was dismissed by passing NIL award. The petitioner suppressed the same filed this case. The petitioner attended his duties as follows:

Sl. No.	Year	No. of Musters
1.	2000	171
2.	2001	152
3.	2002	140
4.	2003	93
5.	January 2004 to November, 2004	86

4. The petitioner was issued a charge-sheet and enquiry was held against him in which he admitted his absence from duties. Enquiry was conducted following all the rules and as per the principles of natural justice. Petitioner was counselled on 25.4.2004 and was kept in observation for three months, the petitioner failed to put in the required musters. During those three months he attended for only 28 days instead of 60 musters. The respondent company cannot employ chronic absentees. The present petition is not maintainable after dismissal of the reference in LCID No.45 of 2006 by Central Government Industrial Tribunal-cum-Labour Court Hyderabad.

5. The petitioner filed memo U/Sec.11A conceding the validity of Domestic enquiry. During the course of hearing Ex.M-1 to M-14 have been marked on behalf of the respondent and no documents are marked on behaf of the Petitioner.

6. Now the point for consideration is wheather the Petitioner can be re-instated into service?

7. Even according to the respondent the number of musters put in by the petitioner up to 2002 was quite reasonable, considering the fact that the work of an under ground coal filler involves a lot of physical strain. That too petitioner joined in service in the year 1987 and obviously upto the year 2003 he worked satisfactorily. Further there was some hastiness acts on the part of the respondent as the counseling was done on 24.5.2014 and an undertaking was taken from the petitioner that he will put in minimum of 20 musters every month from June, 2004 to August, 2004, but even after the expiry of 3 months period enquiry was conducted on 18-6-2004. Thus it is apparent that the petitioner was not given the chance to prove his readiness to join work. Enquiry report was given on 20.7.2004 and show cause notice was given on 16.9.2004. Subsequently petitioner was dismissed from service as per order, dt. 6.1.2005 with effect from 10.1.2005.

8. The statutory right of the petitioner to move this petition cannot be taken away by mere filing of reference before Central Government Industrial Tribunal. Considering the fact that the petitioner served the respondent organization for about 14 years without any remark and it was only in the year 2003-2004, that there was less attendance by the petitioner, he need not have been punished with the extreme punishment of dismissal. In one stroke the respondent has stated that the petitioner will not be in service from 1987. Viewed from any angle the punishment given to the petitioner is shockingly disproportionate and completely ignoring the previous service of the petitioner for 14 years. Certain unavoidable circumstances in the life of a person may compel him to forego his duties at the place of employees, but that does not mean that he is to be dismissed from service without taking into account his previous service. Therefore this is a fit case to re-instate the petitioner and accordingly the petitioner is to be re-instated into service within 30 days from the date of this award becoming enforceable.

9. In the result, the dismissal order dt. 6.1.2005 marked as Ex.M-10 passed by the respondent No. 2 is set aside. The respondents' company is hereby directed to re-instate the petitioner into service as coal filler within (30) days from the date of this award becoming enforceable. The petitioner is entitled to protection of the services rendered by him from the year 1987 till his dismissal from service and accounted for all purposes. However the petitioner is not entitled to any back wages, but he is entitled to all attendant benefits.

G. V. KRISHNAIAH, Chairman-cum-Presiding Officer

**Appendix of Evidence****Witnesses Examined**

For workman:-

-Nil-

For Management:-

-Nil-

न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 1/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-04-2015 को प्राप्त हुआ था।

[सं. एल-22013/1/2015-आईआर (सी-II)]

मो. जाहिद शरीफ, अनुभाग अधिकारी

**EXHIBITS**

For workman:-

-Nil-

**For Management:-**

Ex. M-1	Dt. 15-02-2004	Charge Sheet o/copy
Ex. M-2	Dt. 22-03-2004	Explanation to the charge sheet
Ex. M-3	Dt. 24-05-2004	Undertaking given by the petitioner after counseling regarding his absenteeism.
Ex. M-4	Dt. 08-06-2004	Enquiry notice.
Ex. M-5	Dt. 18-06-2004	Enquiry proceedings.
Ex. M-6	Dt. 20-07-2004	Enquiry report.
Ex. M-7	Dt. 16-09-2004	Show cause notice.
Ex. M-8	Dt. 16-09-2004	Ack, to show cause notice.
Ex. M-9	Dt. —	Explanation to the show cause notice.
Ex. M-10	Dt. 06-01-2005	Dismissal order.
Ex. M-11	Dt. 02-08-2006	Order of Govt. of India, New Delhi, referring the dispute to the CGIT, Hyderabad.
Ex. M-12	Dt. 11-10-2006	Notice in ID-45/2006 issued by the Secretary to Govt. CGIT, Hyderabad, x.copy.
Ex. M-13	Dt. 02-02-2009	Award in ID. No. 45/2006 of CGIT, Hyderabad, x.copy.
Ex. M-14	Dt. 24-03-2009	Notification letter No. 22012/246/2005-IR (CM.II) Govt. of India, New Delhi.

नई दिल्ली, 30 अप्रैल, 2015

**का.आ. 972.—**ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में केन्द्रीय सरकार डब्ल्यूएसीएल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम

S.O. 972.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Cent. Govt. Indus. Tribunal-cum Labour Court, Nagpur (ID/1/2012) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of WCL and their workmen, which was received by the Central Government on 28.04.2015.

[No. L-22013/1/2015-IR(C-II)]

MD. ZAHID SHARIF, Section Officer

**ANNEXURE****BEFORE SHRI J.P. CHAND, PRESIDING OFFICER,  
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/Application 1/2012

Date: 30.01.2015

**Applicant:** Rajesh S/o Dashrath Leader,  
Aged about 38 years,  
Occupation-Ward boy,  
R/o. Ramnagar, Qtr. No. 238  
Ghugus, P.O. Ghugus,  
Distt. Chandrapur, 442505

**Versus**

**Respondents:** (1) Western Coalfields Limited,  
Civil Lines, Nagpur,  
Through its Managing Director.  
  
(2) The Chief General Manager,  
Western Coalfields Limited,  
Wani Area, Urga Gram,  
Post- Tadali, Distt. Chandrapur.  
  
(3) The General Manager,  
Western Coalfields Ltd.  
Ghugus Coallery,  
Post- Ghugus,  
Distt. Chandrapur.

**AWARD**

(Dated: 30th January, 2015)

This is an application filed by the applicant, Shri Rajesh Dasharath Leader ("the applicant" in short), under section 13(A) of the Industrial employment (Standing Orders) Act, 1946 ("Act, 1946" in short) for interpretation of the Certified Standing Order of Western Coalfields Limited ("WCL" in short).

The case of the applicant as projected in the application is that he has passed class VII and WCL is a company formed by the Government of India in pursuance to the Coal Mines Notionalization Act, 1973 and is a subsidiary of Coal India Limited and the Standing Order of WCL dated 19.02.1993 has been duly certified and the same has been amended from time to time and the service conditions of the employees of WCL including himself are governed by the provisions of the said certified Standing Order and he came to be appointed as a General Mazdoor Category 1 on 29.10.1999 and in due course, he was promoted and posted at Rajib Ratan Hospital, Ghugus *w.e.f.* 31.12.2007 and his wife, Archana got burn injuries and expired on 06.11.2008 and 6.11.2008 was his rest day and from 06.11.2008, he attended the post funeral ceremonies of his wife and on 09.11.2008, he was arrested by the police and on 06.10.2009, he was granted bail by the Hon'ble High Court and he was released on bail and on 15.10.2009, he went for joining his duties at the hospital, but he was not allowed to join duty, so he contracted his counsel at Nagpur and on 07.11.2009, his counsel addressed a letter to the Additional General Manager, WCL, Ghugus, which was duly received by the respondents and by the said letter, demand was made to allow him to resume his duties but even then, he was not allowed to join duties and his salary from 04.11.2008 was also not paid to him and at the relevant time, he was having 12 days of earned leave, 11 days of causal leave and 60 days of medical leave and therefore, there was no reason to withhold his salary from 04.11.2008.

The further case of the applicant is that he had informed the respondents on 18.11.2008, through the Jail Superintendent, Chandrapur about his detention in custody and therefore, the respondents ought to have suspended him, consequent upon his arrest by the police on 06.11.2008 and his absence was on valid reason and was therefore was not a misconduct, but he was served with the charge sheet dated 17.11.2008, under clause 26.30 of the certified Standing Order, on the allegation of his remaining absent from 04.11.2008 without any intimation or sufficient reason and his arrest was a reasonable cause for his not resuming duty and therefore, charge sheet should not have been issued by the respondents under clause 26.30 of the Standing Order against him and in pursuance to the said charge sheet, a departmental enquiry was conducted and in his report, the enquiry Officer, Shri Mahesh Harkatal concluded that after the completion of

the Criminal proceedings, final action could be taken and from such facts, it is clear that the charge of unauthorized absent from duty was not proved against him and the charge under clause 26.30 of the standing Order did not have any relation with his convicted in the criminal case.

It is also pleaded by the applicant that the respondents issued another charge sheet dated 20.12.2009 under clause 26.8 of the Certified Standing Order against him on the allegation of his conviction in any court of Law for criminal offence involving moral turpitude and he faced his trial in Sessions Case No. 29/2009 under sections 498-A, 304-B and 302 of the Indian Penal Code, in the Court of the Learned Additional Sessions Judge-II, Chandrapur and by order dated 23.09.2009, he was convicted by the Court under section 498-A of the IPC and sentenced to undergo rigorous imprisonment of three years and to pay a fine of Rs. 15000/-, i.d. to undergo further rigorous imprisonment for two months and against his conviction and sentenced, he filed Criminal Appeal No. 463/2009 before the Hon'ble High Court, Nagpur Bench and the appeal was admitted and he was granted bail and the substantive sentence of imprisonment was suspended as per order dated 06.10.2009 of the Hon'ble High Court and clauses 28.2 to 28.4 of the certified Standing Order deal with suspension of a delinquent employee, but he was not suspended by the respondents and he was also not allowed to join duties and as he was not allowed to join duties, he was entitled to subsistence allowance as prescribed or the entire period needs to be treated as duty and therefore, it is necessary to interpret as to whether, an employee can be deemed to be under suspension and entitled to subsistence allowance, in case the said employee is not allowed to resume duty.

The applicant has prayed to interpret the Certified Standing Order and to find out as to whether he is entitled to full salary/subsistence allowance, when he was not allowed to resume duties, even though he went to join duties.

3. The respondents have filed a joint written statement and have pleaded *inter-alia* that the application is not maintainable in the eye of Law and is liable to be rejected as the applicant has not approached the Tribunal with clean hands and he has tried to mislead the Tribunal and has suppressed material facts and the applicant remained absent from duty without any sanctioned leave or information from 04.11.2008 and for the said reason, charge sheet dated 16/17.11.2008 under clause 26.30 of the certified Standing Order of WCL was served on him and he submitted the reply to the said charge sheet, stating that he was arrested by the Police on suspicion of his involvement in his wife's death and was detained in judicial custody and 10 months of the arrest of the applicant, a letter dated 09.09.2009 was received from the police station Ghugus, Chandrapur regarding the arrest of the applicant on 09.11.2008, in connection with his wife's death and that the applicant was

charge sheeted in Crime No. 151/2008, under sections 498-A, 304-B and 302 of the Indian Penal Code and was kept in judicial custody and in view of such information, action against the applicant was not taken on the basis of the charge sheet dated 16/17.11.2008 and the applicant was convicted in Sessions Case No. 29/2009 under section 498-A of the Indian Penal Code and was sentenced to undergo rigorous imprisonment of three years and to pay a fine of Rs. 15000/- and the applicant has filed criminal Appeal No. 436/2009 before the Hon'ble High Court, Nagpur Bench against the order of conviction and sentence and by the order of the Hon'ble High Court, dated 06.10.2009, the applicant was released on Bail on 10.10.2009 and by the order of the Hon'ble High Court, the sentence of imprisonment has been suspended pending hearing and final disposal of the criminal appeal and the said appeal is still subjudiced and due to conviction of the applicant in the criminal case, charge sheet dated 17/20.12.2009 under clause 26.8 of the Certified Standing Order was submitted against him and the applicant submitted his explanation to the said charge sheet on 28.12.2009 and as his explanation was found not to be satisfactory a departmental enquiry was conducted against him by adopting due procedure and the disciplinary authority passed the order of dismissal from service against the applicant, holding the charge to have been fully proved against him. By way of amendment that the applicant filed a case before the Assistant Labour Commissioner (Central), Chandrapur-Cum-Conciliation Authority *vide* case No. 54 (117) 2011 dated 14.10.2011 for payment of subsistence allowance and wages and to allow him to join duty and the applicant during the enquiry proceeding or before that had not applied for subsistence allowance and he made an application for subsistence allowance only on 27.01.2012, after filing of the case before ALC and before failure of conciliation, the present application has been filed and unless, the conciliation proceeding before the ALC is completed, the applicant cannot take the shelter of the Tribunal as in both the proceedings, the relief claimed is indirectly and consequentially the same and as such, this application is liable to be rejected.

4. It is also averred by the respondents that to entertain an application u/s. 13-A of the Act, 1946 and to decide the same, a specific notification is required to be published by the appropriate Government in this official gazette and there is no such notification empowering this Tribunal to entertain the application u/s. 13-A of the Act, 1946 and to decide the same, this Tribunal has no jurisdiction to decide the application and the application is not maintainable and no salary is payable to the applicant from 04.11.2008 as he did not work from the said date as per the principle of "No Work, No Pay" and to his credit and the management reserves the right to suspend a workman being prosecuted in a court of law for any criminal offence involving moral turpitude or murder until the disposal of the trial, as per

clause 28.9 of the Certified Standing Order and the applicant is not entitled for subsistence allowance as per clauses 28.4 and 28.9 of the Certified Standing Order and the application filed by the applicant is liable to be rejected.

5. In the rejoinder, the applicant has pleaded that, the question raised by him is the question of interpretation of the Standing Order and in case No. CGIT/NGP/Application No. 1/2006 decided on 22.03.2012, it has been held by this Tribunal that an application u/s. 13-A of the Act, 1946 is maintainable and the various grounds raised in the reply by the respondents are without any substance and reference to the proceedings before the ALC is totally unwarranted and the proceeding before the said authority was at the instance of the union, whereas, the present application is filed by him in his individual capacity and the application is maintainable.

6. In support of his claim, the applicant has examined himself as a witness and in his evidence on affidavit, he has reiterated the facts mentioned in the statement of claim.

In his cross-examination, the applicant has admitted that as from 04.11.2008, he did not join his duty and did not work from 04.11.2008, he was not paid wages by the management and he did not submit any leave application to the management of WCL for remaining absent from duty and prior to November, 2008, he had already availed all type of admissible leaves in this account and as he remained unauthorized absent, management submitted the first charge sheet on 17.11.2008 and after receipt of the charge sheet, he sent a notice through the Superintendent of Chandrapur Jail to the management and management did not take any further action on the charge sheet dated 17.11.2008. The applicant has further admitted that due to his conviction in the criminal case, he was not allowed to join duty by the management and a second charge sheet was submitted by the management on 17.12.2009, on the ground of his conciliation in the criminal case and as per the final order of the Disciplinary Authority dated 01.09.2013, he has been dismissed from service and I had not filed any application before the management for grant of subsistence allowance to him during the period of the enquiry and for the first time, on 27.01.2012, he filed an application for subsistence allowance and management gave reply to his application on 21.02.2012.

7. At the time of argument, it was submitted by the learned advocate for the applicant that in this application it is necessary to interpret the Certified Standing Order to find out as to whether the applicant, who was not allowed to resume his duties, even though, he went to join duties to entitled to full salary or subsistence allowance and clause 28.9 of the Standing Orders deals with the provisions of suspension of a workman, when he is prosecuted in a court of law for a grave criminal offence involving moral turpitude or murder until the disposal of the trial and payment of subsistence allowance and the applicant was arrested by

the police on 09.11.2008 for commission of the offences u/s. 302, 498A and 304B of the IPC for the death of his wife and on 06.10.2009, he was released on bail by the Hon'ble High Court and on 15.10.2009, he went to join his duties, but he was not allowed to join duty and he was illegally and without any order or without having any provision in the Standing Orders was kept away from duties.

It was further submitted by the learned advocate for the applicant that the applicant was convicted by the learned Additional Session Judge, Chandrapur by order dated 23.09.2009, under section 498-A of the I.P.C. and sentenced to undergo rigorous imprisonment and to pay a fine of Rs. 15000/- and the applicant preferred an appeal against the order of his conviction and sentence before the Hon'ble High Court, Nagpur Bench and by order of the Hon'ble High Court, dated 06.10.2009 he was released on bail and the sentence of imprisonment was suspended and the respondents had served a charge sheet dated 17.11.2008 on the applicant for remaining unauthorized absent from duty, but did not take further action when on the said charge, as it was made known that the applicant was detained in the Jail custody, but another charge sheet dated 20.12.2009 was served on the workman on the allegation of his conviction u/s. 498A of IPC and he was dismissed from service on 01.09.2013 and it is therefore necessary to interpret the Standing Orders and to hold that the applicant is entitled to full salary and allowance admissible to him and that he be deemed to be on duty from 15.10.2009 till the date of dismissal.

8. Per contra, it was submitted by the learned advocate for the respondents that in absence of any notification u/s. 13A of the Act, 1946 by the Central Government, empowering this Tribunal to interpret the Standing Orders, the Tribunal has no power to interpret the Standing Orders and the applicant had not asked for any subsistence allowance prior to 27.01.2012 and he has raised on an industrial dispute before the Assistant Labour Commissioner (Central), Chandrapur regarding the non-payment of salary/subsistence allowance for conciliation and during the pendency of the conciliation proceedings, he had filed this application and for that this application is not maintainable and under clause 28.9 of the Certified Standing Orders, the right to suspend a workman is with the management and as the applicant was not suspended and as he had not worked, he is also not entitled for the salary basing on the principle of "no work no pay" and the application is liable to be rejected.

10. First of all, I will take up the submission made by the learned advocate for the respondents regarding the jurisdiction of this Tribunal to entertain and dispose of the application, on the ground that a special notification under section 13A of the Act, 1946 is necessary, empowering this Labour Court to exercise the jurisdiction to entertain and dispose of applications under section 13-A and as there is

no such notification, this tribunal is not empowered to entertain and dispose of the application.

It is to be mentioned here that, in his application the applicant has referred to the order passed in application No. 1/2006 by this Tribunal on 22.03.2012, holding that this Tribunal has jurisdiction to interpret the standing orders, even in absence of any notification u/s. 13-A of the Act, 1946 by the Central Government. It will not be out of place to mention that in Application No./2006, order had been passed, basing on the principles enunciated by the Hon'ble High Court of Bombay as reported in 1969 LAB IC-934 (Chipping and Painting Employees' Association Private limited, Bombay Vs. A.T. Zambre and another). The Ho'ble high Court, in the said decision have held that:

"(A) Industrial Employment (Standing Orders) Act, (1946), S. 13A-Respondent appointed Presiding Officer of Labour Court under S. 8, Industrial Dispute Act. He can decide questions relating to interpretation and application of standing order, even in absence of notification under S. 13 A-Industrial Disputes Act, (1947), Ss. 2(k), 7, 8, 10(1)(c), Schedule 2, Entries 1 and 2.

Where the respondent was appointed as Presiding Officer of the Central Government Labour Court under S. 8 of the Industrial Disputes Act but there was no notification issued under S. 13A of the Industrial Employment (Standing Orders) Act either empowering the respondent to dispose of the application for reinstatement of the workman who was treated as having abandoned his services in terms of the standing orders, by overstaying his leave without getting the same extended, or the questions or proceedings as to application or interpretation of a standing order under the provision of section 13A, the respondent is competent even in the absence of a notification under section 13A to entertain an application under sec. 13-A and under Sec. 7 of the Industrial Disputes Act read with Entries 1 and 2 of the Second Schedule to the Act."

However, after going through the above said decision of the Hon'ble High court in detail, it is found that the Hon'ble high court have also stated that:—

"The application and interpretation of Standing Orders would undoubtedly fall within the definition of an 'industrial dispute' in Section 2(k) Industrial Disputes Act. An industrial dispute after it is referred to a Labour Court under the provision of Section 10(1) (c) of the Industrial Disputes Act, would be a proceeding. Similarly, a question arising as to the application or interpretation of a Standing order under s 13-A could be referred to any Labour Court constituted under the Industrial Disputes Act and would be a proceeding. A question under section

13A as to the application or interpretation of a standing order would be a proceeding of the same kind as a dispute under section 10 (1) (c) of the Industrial Disputes Act as to the application or interpretation of a standing order under Entry No. 2 in the Second Schedule. The words and specified for the disposal of such proceedings in section 13A would mean 'Specified for the disposal of disputes under Entry No. 2 in the Second Schedule to the Industrial Disputes Act.

The object of section 13-A which is to provide a provision which enables workmen to the question of application and interpretation of standing orders determined without the intervention of appropriate Government will best be served by the above interpretation which is a reasonable interpretation.

Once a labour court is constituted to deal with matters in Entry No. 2 in second schedule, the question must be referred to such Court and if there are more than one Court so authorized in any area, the party referring the question would obviously have a choice of forums, unless there were certain rules under which his choice was limited."

From the principles as mentioned above, it is clear that though this Tribunal is empowered to exercise the power under section 13-A of the Act, of the Act, 1946, without any specific notification by the Central Government in that regard, the Tribunal is not empowered to entertain an application filed u/s. 13-A of the Act, 1946 filed by a party directly before the tribunal. The Party is required to raise an industrial dispute before the Conciliation Officer in that regard and on failure of the conciliation; a failure report has to be submitted to the appropriate government and the Appropriate Government has to refer the industrial dispute to the Tribunal for adjudication and then only, the Tribunal can adjudicate the dispute and pass the necessary order.

Admittedly, in the case, the applicant has raised the dispute before the Conciliation Officer, Chandrapur and the same is pending for conciliation. So, applying the principles as enunciated by the Hon'ble Bombay High Court as mentioned in the decision referred above to the case in hand, it is found that the application filed by the applicant directly before this Tribunal is not maintainable and the same is liable to be rejected. In view of the finding that the application is not maintainable, there is no scope to decide the application on merit. Hence it is ordered:—

### **ORDER**

The application is not maintainable and is rejected. The applicant is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2015

**का.आ. 973.—**ओद्योगिक विवाद अधिनियम, 1947( 1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार डल्च्यूसीएल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकारण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 12/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-04-2015 को प्राप्त हुआ था।

[सं. एल-22012/39/2014-आईआर (सीएम-II)]

मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 30th April, 2015

**S.O. 973.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 12/2014 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure, in the Industrial dispute between the management of Western Coalfields Limited, Umrer Area, and their workmen, received by the Central Government on 28-04-2015.

[No. L-22012/39/2014-IR(CM-II)]

MD. ZAHID SHARIF, Section Officer

### **ANNEXURE**

### **BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/12/2014

Date: 12.01.2015

**Party No. 1 :** The Sub-Area Manager, Western Coalfields Limited, Makardhokda Sub-Area, Po & Tah. Umrer, Distt. Nagpur-4110204 (MS).  
**Party No. 2 :** The Deputy Chief Personal Manager, Western Coalfields Limited, Makardhokda Sub-Area, Po & Teh. Umrer, Distt. Nagpur-4110204 (MS).

### ***Versus***

**Party No. 2 :** The President, Samyukta Khadan Mazdoor Sangh (SKMS), WCL, Umrer Area, Tah. Umrer, Distt. Nagpur-441204.

### **AWARD**

(Dated: 12<sup>th</sup> January, 2015)

In exercise of the powers conferred by clause

(d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of W.C.L. and the workman, Shri Deorao B. Kuhite for adjudication, as per letter No. L-22012/39/2014-IR (CM-II) dated 30.05.2014, with the following schedule:—

"Whether the action of the management of Western Coalfields Ltd., Makardhokda Sub-Area by denying the regularisation of post of Clerk Gr. I to Accounts Clerk Gr. I or denying change of designation in respect of Sh. Deorao B. Kuhite is just, fair & legal? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed by registered post with acknowledgement due to file their respective statement of claim and written statement.

On receipt of the notice the workman appeared on 22.09.2014 and the case was adjourned to 20.11.2014 for filing of Statement of claim, documents and list of witnesses and reliance by the workman. The management representative appeared on 20.11.2014. On 20.11.2014, neither the workman appeared nor filed any statement of claim. However, in the interest of justice the case was adjourned to 12.01.2015 for filing of statement of claim by the workman, to give him a chance to take part in the case. On 12.01.2015 also, the workman did not appear. No Statement of claim was also filed by the workman. Hence, the case was closed and fixed for award.

3. It is well settled that whenever a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and it is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the party fails to appear or file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the said party and the party would not be entitled to any relief.

Judging the present case with the touch stone of the settled principles as mentioned above, it is found that the workman has neither appeared nor filed any statement of claim and as such, he is not entitled to any relief. Hence, it is ordered:—

## ORDER

The reference is answered in the negative and against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2015

**का.आ. 974.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू०सी०एल० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 48/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-04-2015 को प्राप्त हुआ था।

[सं. एल-22012/42/2009-आईआर (सीएम-II)]  
मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 30th April, 2015

**S.O. 974.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 48/2009 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure, in the Industrial dispute between the management of Western Coalfields Limited, and their workmen, received by the Central Government on 28-04-2015.

[No. L-22012/42/2009-IR(CM-II)]  
MD. ZAHID SHARIF, Section Officer

## **ANNEXURE**

**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER,  
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/48/2009

Date: 14.01.2015.

**Party No. 1 :** The Chief General Manager,  
Ballarpur Area,  
Western Coalfields Limited  
Ballarpur, At/PO: Sasti,  
Chandrapur (MS).

Versus

**Party No. 2 :** The Secretary,  
Koya Shramik Sabha (HMS),  
At/PO: Ballarpur,  
Chandrapur (MS).

## AWARD

(Dated: 14th January, 2015)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of and their workmen, Shri, for adjudication, as per letter **No. L-22012/42/2009-IR (CM-II) dated 16.03.2010**, with the following schedule:—

"Whether the action of the management of Ballarpur Area of WCL in allegedly denying promotion to

S/Shri S.B. Deshmukh, R.L. Narawar, T.K. Raipure and P.G. Golibar is legal and justified? To what relief are the claimant workmen entitled for?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri, ('the workman' in short), filed the statement of claim and the management of ("Party No. 1" in short) filed their written statement.

The case of workman as presented by the union in the statement of claim is that it is a registered trade union under the Trade Unions Act, 1926 and Party No. 1 is a government company and is a state within Article 12 of the Constitution of India and JBCCI has formulated different promotional cadres for different trades including for promoting of the Ministerial/Clerical cadre, Stores Personnel and loading Personnel etc. and the coal companies are bound to implement such cadre scheme to give promotion to their employees and Annexure VIII-3 of Cadre Scheme VIII (Cadre Scheme for ministerial staff) circulated *vide* implementation instruction No. 34 dated 17.07.1984 provides promotional growth for Loading Personnel and according to the said scheme, the carrier growth is Assistant Loading Clerk Grade III, Loading Clerk Grade II, Assistant Loading Inspector/Assistant Loading Superintendent T&C Grade-C, Loading Inspector/Assistant Loading Superintendent T&C Grade-B and finally Senior Loading Inspector/Senior Loading Superintendent T&C Grade-A and all the four workmen who are working as Loading Clerk Grade-II were transferred from one mine to another and one sub area to another and due to such deliberate transfers, they were not considered for promotion.

It is further leaded by the union on behalf of the workmen that Shri M.P. Prabhudas and Shri Venugopal Kusma, who joined as General Mazdoor Category-I *w.e.f.* 09.12.1992 and 21.12.1992 were regularized as General Clerk Grade-III *w.e.f.* 01.01.1994 *vide* office order dated 16.03.1994 and 30.03.1995 respectively and out of way within a year, they were again promoted as General Clerk Grade-II *w.e.f.* 01.01.1995, without observing the time limit fixed for promotion to the higher post as prescribed in the cadre scheme and they were brought to the loading cadre as Clerk Grade-II *w.e.f.* 15.03.1997 and promoted as Assistant Loading Inspector Grade-C and at present they are working at Ballarpur Open Cast Mine on promotion to the post of Loading Supervisor Grade-B *w.e.f.* 14.10.2005.

The further case as presented by the union on behalf of the workmen is that workman, Shri S.B. Deshmukh initially was appointed on 06.11.1989 as an apprentice and in 1990, he was confirmed in Category-II and he was regularized as Assistant Loading Clerk Grade-III *w.e.f.* 06.11.1993 and he was the senior most employee under the cadre scheme of Loading Personnel and Shri Deshmukh was transferred from Sasti O/c to Gouri O/c and again he was transferred to

Sasti Colliery on 25.08.2006 and because of such frequent transfers, he has been stagnant in the post of Loading Clerk Grade-II since 01.07.1997 without promotion and he was superceded by Shri M.P. Prabhudas, Shri Venugopal and others twice, once at the time of promotion to the post of Assistant Loading Inspector Grade-C and again at the time of promotion to the post of Loading Superintendent Grade-B in the year 2005 and since April, 2010, he is working at Ballarpur Colliery 3 & 4 pits as Loading Clerk Grade-II.

It is further pleaded by the union that workman, Shri P.G. Golibar was initially appointed on 18.10.1990 and he was regularized as Assistant Loading Clerk Grade-II *w.e.f.* 01.07.1997 alongwith Shri Deshmukh and Shri Narawar and he has been stagnant in the said post since the last 13 years without promotion and he has been superceded by Shri M.P. Prabhudas and Shri Venugopal at the time of promotion to the post of Loading Clerk Grade-I and Supervisor Grade-B and workman, Shri T.K. Raipure was appointed as Apprentice Trainee Operator *w.e.f.* 03.12.1990, but he was performing the duties at the Weighbridge and he was regularized in the post of Assistant Loading Clerk Grade-III *w.e.f.* 01.01.1994 and he was promoted to Clerk Grade-II *w.e.f.* 01.01.1998 and since then he has been made stagnant in that post without promotion and he has been superceded by Shri M.P. Prabhudas and Shri Venugopal at the time of promotion to the post of Loading Clerk Grade-I and Supervisor Grade-B and Shri Raipure belongs to schedule caste and his promotion was to be regularized as per the reservation policy for SC/ST of Government of India and workman, Shri R.L. Narwar belongs to schedule tribe and he was initially appointed on 10.10.1991 and was regularized in the post of Assistant Loading Clerk Grade-III *w.e.f.* 01.01.1994 and was promoted to Grade-II *w.e.f.* 01.01.1997 and depriving of the workmen of their legitimate promotion by Party No. 1 was in gross violation of the statutory provisions of Law and though the workman made representation to their Controlling Officer by their representation dated 29.12.2008, but Party No. 1 did not consider their representation and Party No. 1 committed unfair labour practice and the workmen are entitled for promotion from the date of promotion of Shri Venugopal and Shri Prabhudas with all other consequential benefits.

3. The Party No. 1 in the written statement, after denying all the adverse allegations made in the statement of claim has pleaded *inter-alia* that the reference is vague and not maintainable in the eyes of Law, as the post to which and the date from which promotion to the workmen was denied, the designation, post and place of posting of the workmen have not been mentioned in the schedule of reference and in absence of such essential ingredients, a proper and logical proceedings cannot be held.

It is further pleaded by the party No. 1 that giving promotion to the employees is managerial function and it cannot be claimed as a matter of right, unless it is

established that there is wrongful suppression and violation of cadre scheme and the dispute is highly belated and the cause of action is alleged to have been emerged in the year 1998, where as the dispute has been raised in the year 2009, after a gap of 11 years and therefore, the dispute is not maintainable and in WCL cadre scheme exists for the employees working in the loading discipline and the entry point post in this cadre is Assistant Loading Clerk in clerical grade III and the next higher posts are loading Clerk Grade II and Assistant Loading Inspector/Superintendent in T & S grade C and all promotions up to grad C take place within Unit/Sub Area level as per the prevailing practice and all eligible candidates working at unit/Sub Area establishments only considered by the DPC for promotion and as per the recommendations of the DPC, promotion are being given to the employees with the Unit/Sub Area and for promotion to the post of T & S grade B, the consideration zone is Area level.

The further case of the party No. 1 is that workmen, Shri S.B. Deshmukh, Shri R.L. Narawar and Shri R.L. Goliwar were promoted to the post of Loading clerk grade II on 01.07.1997 and workman, Shri T.K. Raipure was promoted to the post of Loading Clerk grade II on 01.01.1998 in the Loading cadre and when the DPC was held in the year 1998 for the promotion to T & S grade C post the workmen not eligible to that post as they had not put in the qualifying experience in clerical grade II post, so, the question of considering their case for promotion by the DPC did not arise and the workmen had not been superseded in any of the above promotions and they have been granted the benefit of service up-gradation to the next higher grade and placed in T & S grade C.

The further case of the party No. 1 is that the claim made by the union on behalf of the workmen is totally misconceived and contrary to the norms/rules of promotion and they have mixed up the seniority of the employees, while alleging supercession and they have drawn comparison between the employees of two different establishments while assessing the seniority list of T & S grade C post and the transfer of the workmen had been done on administrative grounds, but such transfers did not affect their promotions and no representation had been made by the workmen in this regard and the chart enclosed as annexure "A" shows that from their respective initial dates of appointment, the workmen had remained posted at Sasti Opencast Mine for 11/12 years and had also received promotions.

It is also pleaded by the party No. 1 that the case of Shri Prabhudas and Shri Venugopal Kusma stands on a different footing and they were appointed at Gouri Open Cast Mine and Gouri Cast being a faster growing unit, the services of Shri Prabhudas and Shri Kusuma were utilized in higher positions and consequently they had to be regularized in

the higher posts in term of regularization rules/norms and no objection was ever raised by any employee or union of Gouri Open Cast and to question it now is irrelevant and they were transferred to Sasti Open Cast Mine, Sasti Sub Area in Clerical Grade-II post and when DPC for promotion to Grade-C post was held at Sasti O/c Sub Area in the year 1998, they were in loading Clerk Cadre and their promotion to Clerk Grade-II was on 01.01.1995 and since their transfer was on administrative ground, they carried their seniority in the post and accordingly, they were considered by the DPC for promotion and were promoted to Grade-C post and this position was accepted by the workman, which was obvious from the fact that they did not lodge any protest against his promotion and as regard the promotion of Shri Prabhudas and Shri Venugopal Kusuma to Grade-B was done on the basis of the recommendations of the Area level DPC and at that time, none of the workman was eligible for promotion to Grade-B post, hence there was no question of their supersession and the representation *vide* application dated 19.12.2008 was of a general nature and no specific grievance was made against the promotion of Shri Venugopal Kusuma and Prabhudas in the same and the said representation was also highly belated and unmerited and deserved no consideration and the comparative statement filed *vide* document No. W-22 is distorted and it has never adopted any unfair labour practice and the claim made by the workmen has no merit and is liable to rejected and the workmen are not entitled to any relief.

4. In the rejoinder, after denying the adverse allegations made in the written statement, it is pleaded by the Party No. 1 that the Party No. 1 has all the essential details about all the four workmen and as the right of the workmen was infringed by way of wrongful supersession by juniors, without following the due procedure of cadre scheme fixed by JBCCI/NCWA and the reservation policy, the same cannot be said to be managerial function and the dispute has been rightly raised at the appropriate time and there was no delay in raising the dispute and there was supersession of the workmen by their juniors of other discipline in the year 2000, 2002, 2007, 2008, 2009 and 2010 and the workmen have been deprived of their legitimate promotion and Party No. 1 was not following the guidelines of JBCCI/NCWA in regard to transfer of employees engaged in sensitive posts and it has transferred only a few of them and retaining their own favourable candidates.

5. Besides placing reliance on documentary evidence, both the parties have led oral evidence in support of their respective claim, whereas, one Shri Sudhakar J. Borkar has been examined as the only witness by the Party No. 1. The respective examination in chief of all the aforesaid witnesses are on affidavit.

So far the documentary evidence is concerned, 24 documents have been admitted into evidence on behalf of

the union and marked as Exts W-I to W-XXIV. Five documents have been admitted into evidence on behalf of the Party No. 1 and marked as Exts. M-I to M-V.

6. Before delving into the merit of the case, I think it necessary to mention that during the pendency of the reference, on 08.05.2012, the workman, Shri T.K. Raipure and the management of Party No. 1 filed the settlement reached between them in Form 'H' dated 06/07.05.2015 and made prayer to dispose of the reference relating to Shri T.K. Raipure in terms of the said settlement and the prayer was allowed and order was passed to treat the reference in respect of Shri T.K. Raipure as "no dispute" award and to make the settlement in Form "H" as part of the award.

7. During the course of the argument, the learned advocates for the parties reiterated the stands taken by them in the statement of claim, rejoinder and written statement respectively.

8. So far the oral evidence adduced by the parties are concerned, the evidence of the three witnesses examined by the union is more or less in the same line of the stands taken in the statement of claim and rejoinder. However, Shri Lade in his cross-examination has admitted that in the year 1998, Mr. Narwar and Mr. Goliwar were not considered for promotion to Grade-C, as they were not qualified for such promotion.

The workman, Shri Deshmukh in his cross-examination has admitted that on 02.11.1993, he was promoted as Assistant Loading Clerk, Grade-III and on 01.07.1997 as Loading Clerk, Grade-II and as he was not eligible for promotion to the post of Assistant Loading Inspector Grade-C, he was not considered for promotion by the DPC and he was given the benefit of service linked up-gradation.

Like wise, workman, Shri Pramod G Goliwar in his cross-examination has admitted that his case is similar to the case of the other three workmen and as his case was never put up before the DPC, he was not given the promotion and he was given service linked upgradation by Party No. 1.

9. Perused the record. Considered the evidence, both oral and documentary, adduced by the parties and so also, the submissions made by the learned advocates for the parties. From the materials on record, the following undisputed facts are found.

- (i) There is a cadre scheme for ministerial staff (loading personnel) as per the Implementation Instruction No. 34 dated 17.07.1984 issued by the JBCCI, (Ext. W-II) and in the said cadre scheme, the minimum educational/technical qualification, eligibility for promotion and mode of promotion have been prescribed.
- (ii) Ext. W-II prescribes that for promotion to the post of Assistant Loading Inspector/Superintendent from the post of Loading Clerk grade II, three years experience as loading clerk in clerical grade II is necessary and the mode of such promotion is by the recommendation of the DPC.
- (iii) The zone of consideration for promotion up to the post of Assistant Loading Inspector/Superintendent grade C is unit/Sub Area level and the zone of consideration for promotion to the post of Loading Inspector/Superintendent grade B and upwards is Area level.
- (iv) Workmen, Shri S.B. Deshmukh, Shri P.G. Goliwar and Shri R.L. Narawar were promoted to Clerk Grade-II *w.e.f.* 01.07.1997, 01.01.1998 and 01.07.1997 respectively, while they were working at Sasti Open Cast Mine.
- (v) Shri Venugopal and Shri Prabhudas were initially appointed as general mazdoor category-I at Gouri Opencast Mine and they were regularized as clerk grade III, *w.e.f.* 01.01.1994, as they had been deployed in the clerical job and completed minimum 240 days attendance, by the order of the Personnel Manager, Gouri Sub Area dated 16/17.08.1994, Ext. W-VI.
- (vi) Shri Venugopal and Shri Prabhudas were made Clerk grade II *w.e.f.* 01.01.1995 at Gouri Opencast Mine, as per the order of the competent authority dated 30.03.1995, Ext. W-VII.
- (vii) The regularization of Shri Venugopal Kusuma and Shri Prabhudas in Clerk Grade-III *w.e.f.* 01.01.1994 and their promotion to Clerk Grade-II *w.e.f.* 01.01.1995 were not challenged by any workman or union of Gouri Sub Area.
- (viii) Shri Venugopal Kusuma and Shri M.P. Prabhudas along with others were treated as Clerk Grade-II performing the job of loading clerks, as per order dated 14/15.03.1997, Ext. W-VIII and such order was also not challenged by anybody.
- (ix) When the DPC for consideration of promotion to the posts of Assistant Loading Inspector/Superintendent, T&C Grade-C at Sasti Open Cast Mine was held, Shri Venugopal Kusuma and Shri M.P. Prabhudas were working at Sasti Open Cast Mine as they had been transferred from Gouri Open Cast Mine to Sasti Open Cast Mine and as they had completed three years of service in Loading Clerk Grade-II, their cases were Considered by the DPC for promotion and they were recommended for promotion to Grade-C along with others by the DPC.
- (x) As none of the four workmen had completed three years of service in Clerical Grade-II at the time of the DPC in 1998, they were not eligible for such

promotion and for that, their cases were not considered for promotion to the post of Assistant Loading Inspector/Superintendent grade C by the DPC.

10. The claim made by the union on behalf of the workmen is that Shri M. Prabhudas and Shri Venugopal Kusuma, who belonged to Ministerial Staff (General Cadre) and much juniors to the workmen were brought to Loading Personnel Cadre illegally and were given promotion as Asstt. Loading Inspector in Grade *w.e.f.* 01.01.1998, whereas, the workmen were not given such promotion and Shri Prabhudas and Shri Venugopal were again promoted to Grade-B from Grade 'C' *vide* order dated 14.10.2005 ignoring the seniority of the workmen and as such, the workmen are entitled for the reliefs as claimed.

The case of the Party No. 1 is that the workmen were given promotions as per rules and the workmen did not raise any objection to the transfer of Shri Prabhudas and Shri Venugopal and their categorization and promotion at any point of time and as an afterthought, the dispute was raised by the workmen in 2008, by giving the representation and as there was no illegality in the promotion of Shri Prabhudas and Shri Venugopal or the other workers, the workmen are not entitled to any relief.

As already mentioned earlier, the workmen were promoted to the post of Clerical grade II on 01.07.1997, whereas, Shri M. Prabhudas and Shri Venugopal Kusuma were transferred to Sasti Sub-Area from Gouri Sub-Area as clerk grade II, *vide* office order dated 07.12.1996 and they were designated as clerk grade II performing the job of loading clerk, as per order dated 14/15.03.1997. The workmen did not raise any objection or protest either to the transfer of the said two employees from Gouri Opencast Mine to Sasti Opencast Mine or their designation or even their promotions. Though, the union has claimed that the workmen were all-along protesting the denial of promotion to them, not a single document, except the copy of the representation dated 19.12.2008 has been filed in support of such claim. Hence, it can be held that there was never any protest from the side of the workmen prior to 19.12.2008. In the representation dated 19.12.2008 also, no specific grievance was raised regarding giving of promotion to Shri Venugopal and Shri Prabhudas. It is also found from the record that the workmen accepted all their promotion without any objection. It is also found that promotion was never denied to the workmen due to their transfer. It is also found from the record that the mode of promotion to the post of clerical grade II onwards in the cadre of loading personnel is on the recommendation of the D.P.C. It is also clear from the materials on record that the workmen were not recommended by the DPC held in 1998 for their promotion, as they did not have the requisite experience of three years in clerical grade II but, Shri Prabhudas and

Shri Venugopal were promoted as Asstt. Loading Inspector grade C on the recommendation of the D.P.C. The said two employees were already in clerical grade II, doing loading work, prior to the promotion of the workmen as loading clerk grade II. On perusal of the document Ext. W-XXII, it is found that the other employees named in the same were considered for promotion to grade C posts, while working in other Unit/sub Area and as the zone of consideration for promotion to grade C posts is in unit/Sub Area level, the workmen are not entitled to claim promotion on the basis of the promotion given to the employees of other Unit/Sub Area. It is clear from the materials on record that the workmen were given promotions on the due dates by Party No. 1, by taking into consideration their merits and seniority and they were not superseded by their juniors and they are not entitled for the reliefs as claimed. Hence, it is ordered.

## ORDER

The reference in respect of the workman, Shri T.K. Raipure be treated as "no dispute" award and the settlement in Form "H" between the said workman and the management of party No. 1 be treated as part of the award, in respect of Shri Raipure.

The reference is answered in the negative and against the rest three workmen, Shri S.B. Deshmukh, Shri R.L. Narawar and Shri P.G. Goliwar. The said workmen are not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2015

**का.आ. 975.—**औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 123/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/04/2015 को प्राप्त हुआ था।

[सं. एल-22012/300/2001-आईआर (सीएम-II)]

मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 30th April, 2015

**S.O. 975.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 123/2002 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure, in the industrial dispute between the management of Ballarpur Sub Area of Western Coalfields Ltd., and their workmen, received by the Central Government on 28/04/2015.

[No. L-22012/300/2001-IR(CM-II)]

Md. ZAHID SHARIF, Section Officer

### ANNEXURE

#### **BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/123/2002                      Date: 22.01.2015

Party No. 1 : The Sub Area Manager  
 Ballarpur Sub Area of Western  
 Coalfields Ltd.  
 Post & Tah. Ballarpur  
 Distt. Chandrapur (MS)

#### Versus

Party No. 2 : Shri K.K. Singh,  
 Sr. Vice President,  
 R.K.K.M.S. (INTUC),  
 Sadbhavana Bhawan,  
 WCL Colony, Durgapur,  
 Padmapur Sub Area,  
 Post Durgapur,  
 Distt. Chandrapur (MS)

#### AWARD

(Dated 23rd January, 2015)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Ballarpur Sub Area of Western Coalfields Ltd. and their workman, Shri Sobhu Basantoo, for adjudication, as per letter No.L-22012/300/2001-IR(CM-II) dated 09.07.2002, with the following schedule:-

"Whether the action of the management of Ballarpur Colliery 3&4 Pits of Western Coalfields Ltd. in dismissing Shri Sobhu Basanti, Loader from service vide order No. WCL/BA/BUG/H/51C/167 dated 03/12.02.2001 is legal and justified? If not, to what relief the workman is entitled?"

It is to be mentioned here that as there were errors in the schedule of reference in regard to the name of the workman and in regard to the letter number of the order of dismissal of the workman, as per corrigendum of the order of the Ministry bearing letter No. L-22012/300/2001-IR(C-II) dated 01.05.2003, the errors in the schedule were corrected and the corrected schedule is as under:—

"Whether the action of the management of Ballarpur Colliery 3 & 4 Pits of Western Coalfields Ltd. in dismissing Shri Sobhu Basantoo, Loader from service vide order No. WCL/BA/BUG/H51C/167 dated 03/12.02.2001 (No. Vekoli/Bakhe/Ba/Bhu/H/51C/167 dated 03/12.02.2001) is legal and justified? If not, to what relief the workman is entitled?

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the union 'RKKMS' ("the Union" in short) on behalf of the workman, Shri Sobhu Basantoo, ("the workman" in short) filed the statement of claim and the management of Western Coalfields Ltd., (Part "No. 1" in short) filed the written statement.

The case of the workman as presented in the statement of claim by the union is that the workman was appointed as a Trammer-cum-Loader in Ballarpur 3/4 pits colliery *w.e.f.* 06.11.1972 and he worked with part No. 1 continuously with unblemished service record and as there was mistake regarding his name in the records and registers of part No. 1, the workman applied for correction of such mistake vide service excerpts supplied to him, inviting objection by the part No. 1, as per the instruction of JBCCI in the year 1987 and as the son of the workman was required to obtain a caste certificate, he was in need of a certificate issued by the party No. 1 having particulars about the caste and income etc. of the workman for production before the Tahasildar, Ballarpur Tahasil and the workman approached the part No. 1 for such a certificate and at the time, it came to his knowledge that correction of his name had not been done and the name of the workman was mentioned as "Sobhu Basantoo" in the attendance register, where as in the pay sheet, his name was mentioned as "Sahdeo Basantoo" and the name "Sahdeo Basantoo" had been mentioned in place of "Sobhu Basantoo" due to clerical mistake and therefore, the workman again applied for correction of his name as "Sobhu Basantoo" *vide* his letter dated 25.04.1996 addressed to the Manager, Ballarpur Colliery and the Personnel Manager, Ballarpur sub Area wrote letter No. 109 dated 31.07.1997 to the police in charge of Dhanapur Police Station to verify as to whether the workman was Sobhu Basantoo or not and though a copy of the said letter, was given to the workman, he was not informed about submission of the report if any, by the police and the part No. 1 thereafter took the fingerprint of the workman on plain paper on some pretext.

The further case of the workman as presented by the union is that part No. 1 issued the charge sheet dated 09.06.1998 against the workman and the said charge sheet was vague and not specific and the workman submitted his reply to the same and subsequently, enquiry was said to have been conducted and though, the workman applied for time on some occasions, he could not able to attend the enquiry due to the misdirection and confusions created by the union representative and the workman received the show cause notice dated 26.07.1999 issued by the party No. 1 and the workman submitted his reply to the said show cause notice and thereafter, no communication was received by the workman from party No. 1, but all of a sudden after lapse of about two years, the workman was served with the order of dismissal from service dated 03/12.02.2001 and there were several infirmities in the letter

of dismissal and the decision taken was mechanical and without application of mind and evaluation of the evidence and the workman appealed vide his letter dated 15.02.2001 to the Chief General Manager, Ballarpur Area of WCL, but his appeal was rejected as informed by the Personnel Manager, Ballarpur Area *vide* letter No. 2653 dated 19.03.2001.

It is also pleaded by the union on behalf of the workman that the enquiry proceedings and report of enquiry were not fair and proper and the same were in violation of the principles of natural justice and the documents available with party no. 1 in respect of the workman were not examined and taken into consideration, while passing of the orders and the entire process was mechanical and without application of mind and even though, repeated request was made for re-enquiry and personal hearing by the workman, the same was not allowed and documents were not supplied to the workman.

The further case of the workman as presented by the union is that the fingerprints on the so-called service file were not of the workman and due to official mistake, entry of other particulars of the workman had been mentioned in the same and during the enquiry, the clerk, who had made the entries in the service file and the handwriting expert were not examined and hence, the enquiry proceeding including report of the enquiry and dismissal was illegal and the allegation made by the party No. 1 that the workman to be as imposter was quite belated and therefore, the charge sheet is to be quashed and the CMPF particulars of the workman submitted to the CMPF authorities for the currency period ending 01.04.1991 to 31.03.1992 and 01.04.1993 to 31.03.1994 and for other years support the contention that he is a genuine worker and the certificate issued by the Gram Pradhan of the village of the workman dated 04.12.2002, the certificate issued by the officer-in-charge of Dhanpur Police Station, domicile certificate issued by the Dy. District Magistrate, statement of contribution of CMPF submitted to CMPF authorities for the currency period ending in March, 1984 and other documents show that the workman is the genuine worker and not an imposter and there is no existence of any Sahdeo Basantoo and the same is created due to the mistake of the office and the so called Sahdeo Basantoo has not been examined and he had never appeared or lodged any complaint and the workman has been victimized.

Prayer has been made by the union for the reinstatement of the workman in service with continuity, full back wages and all consequential benefits.

3. The party no. 1 in the written statement after denying the adverse allegations made in the statement of claim has pleaded inter-alia that on Sahdeo Basantoo was employed on 06.11.1972 at erstwhile Ballarpur colliery, then owned and managed by a private company and entry to the said effect was made in the "Form-B" register and the said mine

was taken over and nationalized from 01.05.1973 under the Coal Mines Nationalization Act, 1979 and after Nationalization, the management of the said mine came under its (Western Coalfields Limited) control and the same was placed under the management of Wardha Valley Area comprising the several collieries of Ballarpur and Chandrapur and during the transition i.e. taking over the management of the mines including Ballarpur colliery, allegedly lot of manipulations and tampering of the records were resorted to, with the motive of inducting wrong persons by impression and on the representation made by the workman to change his name from Sahadeo Basantoo to Sobhu Basantoo, the case was deeply examined in context of the various entries made in different records and it was noticed that several manipulations had been done and *prima facie* case of impersonation was identified and therefore, immediate step was taken to get the LTI of the person, who had affixed it on service sheet with LTI of the workman and for the said purpose, the LTI of the workman was obtained and the LTI were sent to the handwriting expert for verification and opinion and the report submitted by the handwriting expert revealed that the LTI of the workman did not match with the LTI on the service book, which led to the obvious inference that the workman was not the same person who had entered the service at the initial stage as Sahadeo Basantoo and in this background, it was decided to call for the explanation of the workman, with a view to provide him an opportunity to explain the discrepancies, which allegedly amounted to misconduct under the relevant provisions of the Certified Standing Orders and accordingly the charges therein with a direction to submit his explanation within three days of the receipt of the same, but as the workman did not submit any explanation and in order to give the workman a fair opportunity, it was decided to make a departmental enquiry and Shri D. Subbarao, the colliery Engineer, Ballarpur 3/4 Pits was appointed as the enquiry officer and the workman was advised to appear in the enquiry with his co-worker and to produce evidence if any and the enquiry officer fixed the enquiry on 24.08.1993, but the workman did not attend the enquiry and thereafter, 9 more dates were given to the workman by the enquiry officer by fixing the enquiry to 27.08.1998, 03.09.1998, 08.09.1998, 17.09.1998, 12.10.1998, 27.10.1998, 12.11.1998, 22.12.1998 and 12.01.1999, and even though the workman was on duty on those dates, he did not attend the enquiry, the enquiry officer completed the enquiry ex parte and submitted his report holding the workman guilty of the charges to the Manager, Ballarpur colliery 3/4 Pits along with the case file and the copy of the enquiry report was sent to the workman *vide* letter no. 138 dated 26.02.1999/04.03.1999, which has duly received by him and the workman submitted an undated reply to the same to the Sub-Areas Manager, stating therein that he did not attend the enquiry, as he was misguided and was also ignorant of the rules of the enquiry and he also requested and satisfactory and considering the seriousness

of the misconduct, he was dismissed from service with approval at the competent authority *vide* order dated 03/12.02.2001 and the workman filed an appeal to the Chief General Manager and the CGM did not find any merit in the appeal and accordingly, the decision of the CGM was intimated to the workman *vide* letter dated 19.03.2001 and the exparte enquiry held against the workman was perfectly justified and fair and his dismissal from service on the proved act of misconduct was legal and justified and the workman is not entitled to any relief.

4. It is necessary to mention here that during the pendency of the case, the workman expired on 06.06.2004 and as such, his legal heirs, namely Madanlan(Son), Manju Devi (Daughter), Sanju Devi (Daughter), Sadanand (Son) and Kavita (Daughter) were submitted in his place.

5. In the rejoinder, the facts mentioned in the statement of claim have been reiterated by the union.

6. As this is a case of dismissal of the workman from services, as a punishment in the departmental enquiry held against him, the fairness of the departmental enquiry was taken up for consideration as a preliminary issue and by order dated 05.12.2014, the departmental enquiry held against the workman was held to be legal, proper and in accordance with the principles of natural justice.

7. At the time of argument, it was submitted by the learned advocate for the union that in this case, the copies of the documents relied on by the management in the departmental enquiry were not served on the workman at least three days prior to the date of the enquiry in violation of the principles of natural justice and fraud was played by the party No. 1 on the Court and as such, the party No. 1 is liable to be thrown out summarily and the enquiry report submitted by the Enquiry Officer not bear the date on which the same was submitted and the same clearly establishes that there was manipulations and concoction and documents produced in the enquiry were manipulated and the findings of the Enquiry Officer basing on such manipulated documents are perverse. It was further submitted by the learned advocate for the union that the order of punishment has been approved by the Appellate Authority and for that the workman lost the chance of appeal and the report of the enquiry officer is not a reasoned order and as the order of dismissal is in violation of the Standing Orders, the same is not sustainable and the legal heirs of the deceased workman are entitled to receive all the legal dues and monetary compensation from the date of the dismissal of the workman till date of his death.

In support of the submissions the learned advocate for the union placed reliance on the decisions reported in (1999) 7 SCC-739 (Yoginath Vs. State of Maharashtra), AIR 1994, S.C. 853(S.P. Chengalvaraya Vs. Jagannath), Air 1973 S.C. 2650 (Western India Match Co. Ltd. Vs. Workmen), Air 1990 S.C. 1308 (State of Madhya Pradesh Vs. Bani Singh) and AIR 1985 S.C. 1121 (Anil Kumar Presiding Officer)

8. Per contra, it was submitted by the learned advocate for the party No. 1 that by order dated 05.12.2014, the Tribunal has already held the departmental enquiry conducted against the workman to be legal, proper and in accordance with the principles of natural justice and the evidence adduced in the departmental enquiry against the workman remained unchallenged, as the workman did not attend the enquiry and the findings of the Enquiry Officer are based on the evidence on record of the enquiry and the Enquiry Officer has assigned reasons in support of his findings and he has properly analyzed the evidence and there is no perversity in his findings and commission of gross misconduct has been proved against the workman in a properly conducted departmental enquiry and as such, the punishment of dismissal from service passed against the workman cannot be said to be shockingly disproportionate and there is no scope to interfere with the punishment and the workman was not entitled to any relief, so, the legal heirs of the deceased workman are not entitled to any relief.

In support of the submissions, the learned advocate for the party No. 1 placed reliance on the decisions reported in AIR 1972 S.C. 2182(M/S the Benaras Electric Light and Power Co. Ltd. Vs Labour Court II) and AIR 2003 SC 1462 (Regional Manager, UPSRTC Vs. Hoti Lal).

9. So far the contentions regarding non supply of documents, notices of the enquiry were not served on the workman at least three days prior to the date of the enquiry and approval of the punishment by the Appellate Authority are concerned, it is to be mentioned that such contentions had been raised by the learned advocate for the union at the time of consideration of the preliminary issue of fairness of the departmental enquiry and the said contentions were considered and answered against the workman, so there is no scope of reconsideration of the said submissions.

10. In view of the other submissions made by the learned advocates for the parties, I think it proper to mention the settled principles regarding the power of a Tribunal in interfering with punishment awarded by the competent authority in departmental proceedings, as enunciated by the Hon'ble Apex Court.

In a number of decisions, the Hon'ble Apex Court have held that:

"The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Art. 309 of the Constitution. If there has been an enquiry consistent with the rules

and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is Malafide is certainly not a matter of the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the enquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

It is also settled by the Hon'ble Apex Court that:-

"A review of the above legal position would establish that the disciplinary authority and on appeal, the appellate authority being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

"In departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking substitute its own conclusion, with regard to the guilt of the delinquent for that of the departmental authorities. Even insofar

as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the Court, in exercise of the power of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process."

It is also settled beyond doubt that departmental enquiry is not bound by strict rules of Evidence Act, but by fair play and natural justice. Only total absence, but not sufficiency of evidence before Tribunal is ground for interference. If the enquiry has been properly held the question of adequacy or reliability of evidence cannot be canvassed before the court and in a departmental enquiry, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability."

11. Judging the present case in hand with the touch stone of the principles enunciated by the Hon'ble Apex Court as mentioned above, it is found that the Enquiry Officer has based his findings on the evidence on record the enquiry, after properly analyzing the evidence and the Enquiry Officer has also assigned cogent reasons in support of his findings. It is also found that this is not a case of no evidence at all or that the findings of the enquiry officer are totally against the whole body of the evidence on record of the enquiry. Hence, the findings of the Enquiry Officer cannot be said to be perverse.

I think it proper to mention here that as the facts and circumstances of the present case are quite different from the facts and circumstances of the case referred in the decisions cited by the learned advocate for the workman, with respect, I am of the view that the said decisions have no clear application to the case in hand.

12. So far the proportionality of the punishment is concerned, commission of grave misconduct under clauses

26.1 and 26.9 of the Certified Standing order has been proved against the workman in a properly conducted departmental enquiry against him. Hence, the punishment of dismissal from service cannot be said to be shockingly disproportionate to the gravity of the misconduct committed by him. Hence, there is no scope to interfere with the punishment imposed against the workman. Hence, it is ordered:

### ORDER

The action of the management of Ballarpur Colliery 3 & 4 Pits of Western Coalfields Ltd. in dismissing Shri Sobhu Basantoo, Loader from service vide order No. WCL/BA/ BUG/H/51C/16 dated 03/12.02.2001 (No. Vekoli/Bakhe/BA/ BHU/H/51C/167 dated 03/12.02.2001 is legal and justified. As the deceased workman was not entitled to any relief, the legal heirs of the deceased workman are not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2015

**का.आ. 976.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यूएसीएल<sup>०</sup> के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 11/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/04/2015 को प्राप्त हुआ था।

[सं. एल-22012/283/2007-आईआर (सीएम-II)]

मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 30th April, 2015

**S.O. 976.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 11/2008 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Western Coalfields Ltd., and their workmen, received by the Central Government on 28/04/2015.

[No. L-22012/283/2007-IR (CM-II)]

MD. ZAHID SHARIF, Section Officer

### ANNEXURE

#### BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/11/2008

Dated: 3.2.2015

Party No.1 : The Sub Area Manager,  
Western Coalfields Limited,  
Kamptee sub Area, Nagpur.

Versus

Party No. 2 : Shri Shakir Ali,  
S/o Subedar (Stowing Fitter),  
R/o Kamptee Colliery, Nagpur.

### AWARD

(Dated: 3rd February, 2015)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western coalfields limited and their workman, Shri Shakir Ali, for adjudication, as per letter **No. L-22012/283/2007-IR (CM-II) dated 03.04.008**, with the following scheduled:

**"Whether the action of the management of Western Coalfield Limited in denying the correction of the date of birth as 21.04.1955 in service excerpts, form "B" register and service book in respect of Shri Shakir Ali and the action of the premature superannuating the concerned workman is legal and justified? If not, to what relief is the deprived workman entitled?"**

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Shakir Ali, ('the workman" in short), filed the statement of claim and the management of Western Coalfields Limited ("Party No. 1" in short) filed their written statement.

The case of the workman as projected in the statement claim is that he was appointed at Kamptee colliery, which was owned by Karamchand Thaper group of Coal Mines, in the middle of the year 1971 and as per the practice in vogue at that time, he was sent for vocational training and subsequently, he was appointed in Kamptee colliery by party no. 1 as stowing mazdoor and in course of time, he was promoted and lastly he was working as stowing Fitter-category VI at Inder colliery and he was prematurely retired from service w.e.f. 30.06.2005 by party no. 1, vide letter of retirement dated 17/18.06.2005 issued by Superintendent of Mine, Inder colliery and at the time of his employment in the year 1971, his date of birth was recorded as 21.04.1955, basing on the school leaving certificate and the T.C. issued by Nehru Krishak Inter College, Khalilabad and at that particular time, a person having completed 16 years of age was appointed in the mines as per the Mines Act and Rules, by the employer, but to his surprise, in the year 1988-89, he was informed by party no.1 that in the records of party no. 1, his date of birth had been recorded as 01.07.1945 and on verification of the Form "B" register at serial no. 898, 27 years as on 01.07.1945 as per ADC "(Age determination Committee) was found to have been mentioned in figures and words, by cutting down the earlier entry" written as 11.11.1948 as per CMPF record and their was a short

signature of an official doing such correction, but such initial was without any designation or seal of the staff and not admitting, but assuming that his date of birth is 11.11.1948 as per CMPF record, still then, the date of his retirement was not correct.

It is further pleased by the workman that the Joint Bipartite Committee for Coal Industry issued Implementation Instruction no. 76 dated 25.04.1988 regarding formulation of a procedure of determination/verification of the age of the employees and for resolution of disputed cases in respect of the date of birth in service records and clause 'B' of the said Implementation instruction no. 76 relates to review/determination of date of birth in respect of the existing employees and clause 'C' of the said Instruction says that, "where there is a variation in the age recorded in the "Form-B" register, CMPF records and Identity cards, the matter is to be referred to the Age Determination Committee/Medical Board and in his case, there was glaring mistake in the age recorded by the party no. 1 and the age relied on by him and such difference was ten years, but party no. 1 did not follow the instructions as required by law and the provisions applicable to the parties and the age determination committed acted in an arbitrary manner and as such, the decision of the age determination committee is illegal and unjustified and the entire procedure adopted by the said committee was contrary to the settled position of law and denial of the opportunity to him for determination of his age was contrary to the instructions issued by JBCCI and the party no. 1 had issued a letter dated 23.09.1988, informing him that his age was recorded as 27 years as on 1945 i.e. his date of birth was recorded as 1st July, 1945 and the said letter was issued by the party no. 1 as his age was found to be disputed in terms of the Implementation Instruction no. 76 issued by JBCCI-IV, under National Coal Wage Agreement-III and party no. 1 has supplied four copies of blank forms of service excerpts to all the employees and asked them to sign the same and to return three copies of the said forms to the Manager of the Mine and such forms were also received by him and as per the instructions, he signed the form by mentioned his full name, permanent address and the names of his family members and submitted the same to party No. 1 and he had specifically asked the Personnel Officer of the Mines about keeping column no. 6, which was meant for mentioning the date of birth, blank and he submitted the school leaving certificate and requested for necessary correction of his date of birth as 21.04.1955, but he was told that the said column and other columns, which were left blank would be filled in by the officer of the Mine and a copy of the said form was handed over to him, duly signed by the Manager of the Mine, in which, his date of birth was mentioned as 01.07.1945 with remarks, "By Age Determination Committee" and he again pointed out to the Management that he was never called before the Age Determination Committee and the decision of the committee was wrong and not

acceptable to him and he immediately submitted a letter in the year 1988 to party no. 1 and strongly disputed about his age recorded in the service sheet and "Form-B" registers and such facts were admitted by the party no. 1 in the conciliation proceedings and he also submitted another applicable along with the true copy of the Transfer Certificate issued by the Principal, Nehru Krishak Inter college, Khalilabad, in which his date of birth was recorded as 21.04.1955 and requested for correction of the wrong recording of his date of birth and the manager, Kamptee colliery, *vide* his letter dated 23.09.1988 informed him that his date of birth was determined as 01.07.1945 by the "Age Determination Committee" and he met the concerned officer of the Mine for getting his date of birth corrected and submitted representation on 14.10.1988 and 17.02.1990 for correction of his date of birth as per the school leaving certificate and that the procedures mentioned in 1.1 No. 76 were not followed in his case, but the same was not accepted by the party no. 1 was recorded as 27 years as on 13.11.1972, as per the recommendation of the Age Determination Committee and the same is final and *vide* letter dated 27/28.01.2005 of the Superintendent/Manager, Inder colliery, he was intimated that his age was recorded as 27 years as on 13.11.1972, as per the recommendation of the Age Determination Committee and the same is final and in the three "Form-B" registers maintained by party no. 1, there are differences in regard to his age and the cutting of the entries in the earlier register creates doubt about the authenticity of his date of birth as recorded in the register by the party no. 1 and in "Form-A" the declaration given by him at the time of his employment dated 02.01.1972, which was filled in by the Mines official and duly certified by the Manager of Mines with the official seal of "Oriental Coal Company Ltd., Kamptee Colliery", his date of birth has been mentioned as 11.11.48 and the action of party no. 1 in ignoring his claim and the record/proof produced by him in support of his date of birth as 21.04.45 was without any justification and the same was improper and contrary to the provision of law and considering his date of birth as 01.07.45 on the basis of the report submitted by the Age Determination Committee, instead of 01.04.1955 and retiring him on 30.06.2005 illegal, improper and contrary to law and he was not given any opportunity to remain present before the Age Determination Committee and to defend his case about his date of birth and though there was a glaring mistake in the records of the company, the party no. 1 did not give any opportunity to him to appear before the Medical Board, constituted for the purpose of determination of age, hence, the report submitted by the Age Determination Committee was illegal, improper and contrary to the records.

The workman has prayed to declare the action of party no. 1 in denying correction of his date of birth as 21.04.1955 to be illegal and unjustified and for his reinstatement in service with continuity, full back wages and all consequential benefits.

3. The party no. 1 in the written statement, after denying all the adverse allegations made in the statement of claim has pleaded *inter-alia* that the present dispute is not an industrial dispute as per the Act and the relief claimed by the workman is civil in nature and as such, the Tribunal has no jurisdiction to entertain the present case and the claim is liable to be rejected and the workman has not approached the Tribunal with clean hands and the case of the workman is false, frivolous and without merit and the workman has willfully concealed about filling Writ Petition No. 3894/2006 by him for correction of date of birth before the Hon'ble Bombay High Court, Ngapur Bench and dismissal of the said Writ Petition by the Hon'ble High Court by order dated 28.09.2006 and the workman was retired from service on 30.06.2005 on superannuation and after his retirement, the workman has raised the dispute regarding his date of birth and there was delay in raising the dispute and on the ground of delay and latches, the case is not maintainable.

It is further pleaded by the party no. 1 that the date of birth of the workman was recorded in the official records, such as, "Form-B" register, service book and other records as 27 years as on 13.11.1972 as per initial Medical Examination (IME) and the IME took place as he had not produced any document in support of his date of birth and stated his date of birth as 27 years at the time of his initial appointment and after having full knowledge of his said recorded date of birth, the workman accepted the same and in token of his such acceptance, he put his thump impression on all official and service records and the Implementation Instruction no. 76 issued by the JBCCI, the highest committee are binding on all the employees of Coal India including the WCL and in view of the Implementation Instruction no. 76 issued by the JBCCI, it had supplied the service excerpts to all its employees for correction of the entries made in "Form-B" register and in 1.1 no. 76, instructions were issued for resolution of pending dispute in regard to date of birth/initial appointment and permanent address of the employees and the workman, who had himself got recorded his different date of birth in CMPF records and Form-B register and as per 1.1 No. 76, his case was put up before the Age Determination Committee ("ADC" in short) of Kamptee Sub Area and the ADC by following all the provision of 1.1. no. 76 and rules and guidelines made for review of the date of birth, determined the date of birth of the workman as 01.07.45 in the 1988 and 1.1. No. 76 indicated that if year of birth is recorded in lieu of exact date of birth, to arrive into exact date of birth, 1st July of the year is to be taken into consideration and as such the date of birth of the workman is arrived as at as 01.07.1945 and the same was also counter signed by the employee and the fact of determination of the workman as 01.07.45 was explained to the workman in vernacular language and he was also informed about the same by sending a letter alongwith the report of the ADC

and the workman accepted his date of birth as 01.07.1945 i.e. 27 years as on the date of appointment and as a token of acceptance, the workman put his thump impression on the fresh "Form-B" and accordingly, he was retired from service on 30.06.2005 and therefore correction of the date of birth of a retired employee that too, who had signed all his service record especially Form-B twice after having full knowledge of his recorded date of birth, is not permissible as per the law and rules of JBCCI and the workman had obtained the transfer certificate of "Nehru Krushak Inter College, Kaliabad" on 26.05.2001 and therefore, it is very clear that he had produced false and fabricated document at the time of ADC in the year 1988 and the impugned transfer certificate makes him 16 years of age at the time of appointment and the claim of appointment of employee at the age of 16 years is false and as per the 1.1. No. 76(B) (I) (a), the impugned transfer certificate, on the basis of which the workman claimed to change his date of birth was not permissible and valid, because the same was issued on 26.05.2001 and the workman did not raise any dispute after filing of the service excerpts till his retirement and accepted all his retirement benefits and after receiving all the retirement benefits without any protest and after one and half years of the date of his retirement, i.e. on 07.12.2006, he raised the present dispute with ill intention and on the basis of false transfer certificate and therefore, the reference is liable to be answered in the negative.

The further case of party no. 1 is that the workman was not appointed in the middle of the year 1971 and his date of appointment was 13.11.1972 as per the service record and the retirement of the workman *w.e.f.* 30.06.2005 was not premature and he did not produce any school leaving certificate at the time of his appointment and his date of birth was never recorded as 21.04.1955 and the appointment of the workman was on 13.11.1972 and at that time, he declared his age as 27 years and on the basis of his statement, his date of birth was recorded as 27 years on 13.11.1972 in the "Form-B" register and so also in the service book and the date of birth as mentioned in the CMPF record cannot be considered, as there is major contradiction in the claim of the workman and the records of the CMPF and according to the claim of the workman his date of birth is 21.04.55, whereas, his date of birth as per the CMPF record is 11.11.48 and the workman is not entitled to any relief.

4. In the rejoinder, the workman has denied all the adverse allegations made in the written statement and pleaded that the reference has been made by the Central Government for adjudication to this Tribunal and as such, the Tribunal has jurisdiction to entertain the present dispute and he has a good case on merit and there was no delay in raising the dispute and there was no initial medical examination and there was no basis for the party No. 1 to record his age as 27 years as on 13.11.1972 and the reference is required to be answered in the affirmative.

5. At this juncture, I think it proper to mention that during the pendency of the reference, the party No. 1 filed an application for dismissal of the reference, on the ground that Writ Petition No. 3894/2006 had been filed by the workman before the Hon'ble High Court, Nagpur Bench for correction of his date of birth and the said writ was dismissed by the Hon'ble High Court on 28.09.2006 and therefore the reference is hit by the principles of res-judicata and by order dated 12.01.2012, the application filed by the party No. 1 was allowed by this tribunal on the ground that the reference is hit by the provisions of res-judicata and the reference was dismissed. The workman challenged the said order by filing of Writ Petition No. 3097/2012, before the Hon'ble High Court, Nagpur Bench and the Hon'ble High Court by order dated 03.10.2012 was pleased to allow the writ petition and to quash and set aside the said order and remanded the reference for disposal according to Law. It is also to be mentioned that L.P.A. No. 520/2012 filed by the party No. 1 before the Hon'ble High Court, Nagpur Bench against the order of the Hon'ble High Court in Writ petition No. 3097/2012 was disposed of on 20.02.2013 by the Hon'ble Division Bench of the Hon'ble High Court, holding that, "no case is made out warranting interference in the impugned order."

6. Besides the documentary evidence, the workman has examined himself as a witness in support of his claim.

It is to be mentioned that no oral evidence has been adduced by the party No. 1 in support of its claim. The party No. 1 has relied on documentary evidence only.

7. In his examination-in-chief on affidavit, the workman has reiterated the facts mentioned in the statement of claim and the rejoinder. He has also proved the document, the copy of his medical examination report dated 23.10.1986, under Rule 29B of the Mines Rules as Ext. W-VI. In his cross-examination, the workman has admitted that he did not submit any school leaving certificate before the authority in 1971, when he entered into the service and when he was appointed in 1971, he was examined by the medical Board and also underwent vocational training and in the copy of the Form-B register, Ext W-II filed by him, his age has been mentioned as 27 years on the date of his appointment and he has put his LTI on Ext. W-II and he has filed the Form-B register of Inter Colliery, Ext-W-III and in Ext., W-III, his date of birth has been mentioned as 01.07.1945 and he has put his LTI on the said register and in the copy of the service book, Ext. W-IV, produced by him, his date of birth has been mentioned as 01.07.1945 and he has put his LTI on the same. The workman has further admitted that neither in his statement of claim nor in his affidavit, he has mentioned that he was medically examined on 23.10.1986, under Rule 29B of the Mines Rules, for the purpose of age determination and as per the Mines Rules, it is necessary for the medical examination of each employee in every five years and his medical examination on

23.10.1986 was to find out his fitness for continuance of his working in the Mines.

8. At the time of argument, it was submitted by the learned advocate for the workman that the workman was initially appointed at Kamptee colliery in the year 1971 as a stowing mazdoor and in the course of time, he was promoted to higher categories and lastly, he was working as stowing fitter category VI at Inder Colliery and at the time of his initial appointment, his date of birth was recorded as 21.04.1955, basing on the school leaving certificate and T.C. issued by Nehru Krushak Inter College, Khalilbad, but in 1988, he was informed by the party No. 1 that his date of birth has been recorded as 27 years as on 01.07.1945 as per ADC in the Form B register and on perusal of the said register, it can be found that the earlier entry made in the same, "11.11.1948 as per CMPF record" was scored out with a short signature of an official doing the correction, but without any designation or seal and Implementation Instruction No. 76 dated 25.04.1988 was issued by the JBCCI for review/determination of the date of birth of the employees working in the Coal Industries and in clause B of the said 1.1.76, the procedures for reviewing/determining the age of the existing employees have been given and as there was glaring mistake regarding the date of birth of the workman in the records of the party No. 1, it was necessary to correct the age of the workman on the basis of the school leaving certificate produced by him as 21.04.1955, instead of 01.07.1945 and the party No. 1 did not follow the instructions as required by law and the age determination committee acted in an arbitrary manner without calling him to appear before them to defend his claim and party No. 1 *vide* letter dated 23.09.1988 informed the workman that the Age Determination Committee decided his date of birth as 01.07.45 and as per the instructions of the party no. 1, the workman mentioned his full name, address permanent address and the names of his family members in the blank forms of service excerpts supplied to him and signed and submitted the same to party no. 1 and the workman was specifically instructed not to fill up column no. 6 meant for mentioning the date of birth and a copy of the said service excerpts was supplied to the workman, wherein his date of birth was mentioned as 01.07.45 with the remarks "By Age Determination Committee" and the workman raised objection to such recording stating that he was never called before the ADC and the decision of the committee to be unjust and not to be acceptable to him and though the workman raised strong objection of recording his date of birth as 01.07.45 instead of 21.04.1955 as per his representations dated 14.10.1988 & 17.02.1990 and produced the true copy of the Transfer Certificate issued by the Principal, Nehru Krushak Inter-College, Kaliabad in support of his claim, but party no. 1 did not consider his objection and though I.I. No. 76 is mandatory and binding on party no. 1, party no. 1 did not follow the procedure prescribed in the same properly and party no. 1, holding

the recommendation of the Age Determination Committee as final, prematurely superannuated *w.e.f.* 30.6.2005.

It was further submitted by the learned advocate for the workman that the records of the party no. 1 are not authentic and there existed three "Form-B" Registers in respect of the workman and the particulars of his employment in the Mine had been mentioned in those registers and the cutting down of the earlier entry regarding the age of the workman in the "Form-B" register, "As 11.11.1948 as per CMPF record" and making new entry, "27 years as on 13.11.1972 as determined by ADC" creates suspicion and doubt about the authenticity and jurisdiction of the entry on the record and the Medical Examination report of the workman, Ext. W-VI shows that he was 32 years of age on 23.10.1986 and in the CMPF form the date of birth has been reported as 11.11.48 and such facts show that the date of birth of the workman had been recorded differently, in different records and as per the school leaving certificate produced by the workman, the date of birth of the workman is 21.04.55 and due to premature retirement of the workman, there was loss of ten years of service to him and the report of the Age Determination Committee is totally incorrect and the important producer of Medical Examination of the workman was not done to determine his age of the said committee and as per the own medical examination report of party no. 1, Ext. W-VI, the year of birth of the workman is 1954 and accordingly, the workman was deprived of nine years of service and the action of the party no. 1 in denying the correction of the date of birth and retiring him from services prematurely is quite illegal and unjustified and as such, the reference is to be answered in favour of the workman and the workman is entitled for the reliefs as claimed.

In support of the submission, the learned advocate for the workman placed reliance on the decision reported in 2002 LAB IC-874 (*Secretary Managing Committee vs. Smt. Usha Saha*) and 2002 (95) FLR-556 (*Ardeshir B. Cursetji Vs. Abjulla Fakir*).

9. On the other hand, it was submitted by the learned advocate for the party no. 1 that there was inordinate unexplained delay in raising the dispute by the workman and the reference is not maintainable on the ground of delay and latches and the dispute as raised by the workman is not an industrial dispute and the same is purely civil in nature and for that also, the reference is not maintainable and the workman did not produce any school leaving certificate at the time of appointment and the workman has admitted such fact in his cross-examination and as such, his age was mentioned on the records as determined by the Medical Board and the workman after accepting the same to be correct, put his thumb impression on the same and as the date of birth of the workman was mentioned differently in the CMPF record, his case was referred to the Age Determination Committee for determination of his date of birth as per I.I. No. 76 and the said committee by following the procedure given as per I.I. No. 76 determined the date

of birth as 01.07.1945 and the school leaving certificate produced by the workman was not authentic and he obtained a false and fabricated certificate and the same was not a valid certificate as required under I.I. No. 76 for correcting the date of birth and the workman is not entitled to any relief.

In support of the contentions, the learned advocate for the party no. 1 placed reliance on the decisions reported in (2000) 8 SCC-696 (*G.M. Bharat Coking Coal Ltd. Vs. Shiv Kumar*), (2003) 8 SCC-673 (*Sushil Kumar Vs. Rakesh Kumar*), (2008) 13 SCC-133 (*Babloo Pasi Vs. State of Jharkhand*), (2006) 5 SCC-584 (*Ravinder Singh Vs. State of UP*) and AIR 1993 SC-2647 (*Secretary & Commissioner Vs. R. Kirubakaran*).

10. Now, taking into consideration the principles enunciated by the Hon'ble Apex Court and the Hon'ble High Courts in the decisions cited by the learned advocates for the parties, the present case in hand is to be considered.

11. First of all, I will take up the submission made by the learned advocate for the party no. 1 that the dispute raised by the workman is purely civil in nature and not an industrial dispute and as such, the reference is not maintainable. However, I find no force in the said contention, because the dispute in question is regarding the retirement of the workman by the party no. 1 before the date of superannuation and such dispute squarely falls within the definition of "Industrial Dispute" as provided in the Act and can be referred to the Tribunal for adjudication under section 10 of the Act.

12. The next contention raised by the learned advocate for the party no. 1 was that due to delay and latches, the reference is not maintainable and the workman is not entitled to any relief. It was submitted that the dispute in question relates to the year 1988 and the same was raised only in 2006 by the workman and that also, after one and half years of his retirement and the delay has not been explained and as such, the reference is not maintainable.

In reply, it was submitted by the learned advocate for the workman that there is no delay in raising the dispute, as the workman was making representations and raising the dispute and when the reference has been made by the appropriate government after failure of the conciliation, the reference is to be adjudicated on merit and the submissions made by the learned advocate for the party no. 1 that the reference is not maintainable due to delay cannot be accepted.

So, far delay in raising the industrial dispute is concerned, it is well settled by the Hon'ble Apex Court in a large number of decisions including the decisions cited by the learned advocate for the party no. 1 that:—

"It is true that the laws of Limitation which might bar any civil court from giving remedy in respect of lawful

rights should not be applied by the Industrial Tribunal. On the other hand, it is a well accepted principle of Industrial adjudication that over state claim should not be generally encouraged or allowed unless there is a satisfactory explanation for the delay. Apart from the obvious risk to industrial peace from the entertainment of claims after a considerable long lapse of time, it is necessary also to take into account the unsettling effect this is likely to have on the employer's financial arrangement.

XXXX      XXXX      XXXX      XXXX

Inordinate delay in raising dispute would result in producing unjust result and it may prove counterproductive to industrial peace. The inactivity of a worker in raising dispute may disentitle him from the relief and no premium can be permitted for the inactivity of the claimant or the applicant. One cannot be permitted to take benefit of one's own wrong.

XXXX      XXXX      XXXX      XXXX

Delay should not be unreasonable. Fact that the workman was making repeated representation not sufficient explanation of delay.

Judging the present case in hand with the touch stone of the settled principles as mentioned above, it is found that the workman was intimated by party no. 1 *vide* letter no. 23.09.1988, Ext. W-V that his date of birth was determined as 01.07.1945 by the Age Determination Committee and the workman raised protest against such findings of the Age Dertermination Committee and requested to record his date of birth as 21.04.1955 on the basis of the school leaving certificate submitted by him and submitted representation dated 14.10.1988 and 17.02.1990. It is also found that even though no action was taken by the party no. 1 on such representations, the workman remained inactive and he did not raise any dispute further till his retirement on 30.06.2005. The workman also did not raise any objection about his date of birth and retirement, even after service of the notice of retirement on superannuation *w.e.f.* 30.06.2005 by the party no. 1. Though the cause of action arose in 1990, the workman raised the dispute only in 2006 and there was delay of about 16 years in raising the dispute. The delay has not been explained by the workman. So, it is held that due to the inordinate unexplained delay, in raising the dispute the workman is not entitled for the reliefs claimed by him.

13. As the claim of the workman is based on the Implementation Instruction No. 76 dated 25.04.1988, issued by the JBCCI, I think it proper to mention the necessary provisions of the said instructions relevant for this case. Clause 'B' of the said instructions, which deals with the "Review/determination of date of birth in respect of existing employees reads as follows:

**(B) Review/determination of date of birth in respect of existing employees.**

1 (a) In the case of the existing employees Matriculation certificate or Higher Secondary certificate issued by the recognized Universities or Board or Middle pass certificate issued by the Board of Education and/or department of Public Instruction and admit cards issued by the aforesaid bodies should be treated as correct provided they were issued by the said Universities/Boards/Institutions prior to the date of employment.

(b) Similarly, Mining, Winding Engine or similar other statutory certificates where the Manager had to certify the date of birth recorded in (i) (a) will be treated as authentic.

(ii) Wherever there is no variation in records, such cases will not be reopened unless there is a very glaring and apparent wrong entry brought to the notice of the Management. The Management after being satisfied on the merits of the case will take appropriate action for correction through Age Determination Committee/Medical Board.

(c) Age Determination Committee/Medical Board for the above will be constituted by the Management. In the case of employees whose date of birth cannot be determined in accordance with the procedure mentioned in (i) (a) or (b) (i) (c) above, the date of birth recorded in the records of the Company, namely Form "B" register, CMPF records and Identity Cards (un-tampered) will be treated as final. Provided that where there is a variation in the age recorded in the records mentioned above, the matter will be referred to the Age Determination Committee/medical Board constituted by the Management for determination of age.

(d) For determination of the age, the Committee/Medical Board referred to above may consider the evidence available with the Colliery Management and/or adduced before it by the employee concerned.

It is clear from clause (b) (I) (a) that Matriculation Certificate or Higher Secondary Certificate issued by the recognized universities or Board or middle pass certificate issued by the Board of Education and/or Department of Public Instruction and admit cards issued by the aforesaid Bodies should be treated as correct, provided they were issued by the said univerisities/Boards/Institutions prior to the date of employment.

So far the case of the workman is concened. he had produced the Transfer Certificate alleged to be issued by the Principal, Nehru Krushak Inter College, Khalilabad, showing that his name was struck off from the school due to his continuous absent while he was in class-IX. The said certificate was obtained on 26.05.2001 as found from the copy of the certificate filed by the workman. As the certificate produced by the workman was neither a

certificate as mentioned in clause (b) (I) (a) of I.I No. 76 nor the same was obtained prior to the date of his employment, so basing on the said certificate, there was no question of correction of the date of birth of the workman.

14. Though the workman was claimed that at the time of his appointment in 1971, basing on the School Leaving Certificate produced by him, his date of birth was recorded as 21.04.1955. However, the workman in his cross-examination has admitted that he did not produce any school leaving certificate before the authority at the time of his appointment. The workman has also not produced any document or record of party no. 1, in which his date of birth was recorded as 21.04.1955. On the other hand, all the documents produced by the workman, Exts. W-II to W-IV, the "Form-B" registers and the service book, his date of birth has been mentioned as 01.07.1945 and the workman has put his thumb impression on such documents.

Alonwith other documents, the workman had filed the copies of the Transfer Certificate alleged to be issued by Nehru Krushak Inter College. On perusal of the same, it is found that the same was issued on 26.05.2001. However, the workman filed such a certificate on 12.01.2015 claiming the same to be the original certificate issued by the said college. On perusal of the certificate produced by the workman on 12.01.2015, it is found that the same was obtained on 14.10.1977 and the word "Duplicate" in red ink has been written on the same. The said certificate is not the original of the copy of the Certificate produced by the workman earlier. The said certificate has not been proved by the workman himself or by examination of any other competent witness. Such facts create suspicion regarding the genuineness of the Transfer Certificate alleged to be issued by Nehru Krushak Inter College.

The workman has stated that in the CMPF Form, his date of birth was recorded as 11.11.48 and such date was also recorded in the "Form-B" register and the same was scored out by party no. 1 illegally. However, the date of birth of the workman mentioned in the CMPF Form is of no avail to him, as the same is not the correct date of birth of the workman according to himself.

15. According to the workman, the Age Determination Committee did not follow the procedure provided in I.I. No. 76, as he was not asked to appear before the said committee at the time of determination of his age and as he was not sent for his medical examination by the Medical Board to determine his age. On perusal of the II. No. 76, it is found that no provision has been made in the same for the appearance of the employee in person before the Age Determination Committee. So, there was no question of party no. 1 directing the workman to appear before the said committee. It is found from the materials available on record that the Age Determination Committee considered the Transfer Certificate produced by the workman in support of his claim to change his date of birth and the documents

available with the party no. 1, to determine the age of the workman. The claim of the workman to correct his date of birth was on the basis of the Transfer Certificate (School Leaving Certificate) and not on the ground of his not having any document in support of his date of birth. So, there was no question of sending him to the Medical Board for his medical examination by party no. 1 to determine his age. Hence, I found no force in the submissions made by the learned advocate for the workman in that regard. On perusal of the records, it is found that there is nothing on record to show that the Age Determination Committee did not follow the procedures prescribed in I.I. No. 76, while determining the date of birth.

16. The last contention raised by the learned advocate for the workman was that on 23.10.1986, the workman was medically examined by the medical officer of party no. 1 and report of such examination was submitted to the authority and in the said medical examination report, the age of the workman was determined as 32 years on 23.10.1986 and by taking such facts into consideration, it can be found that according to the own document of party no. 1, the year of birth of the workman was 1954 and by taking the margin of error of one year in such determination on either side it can be held that the year of birth of the workman was 1955 as claimed by the workman and on the basis of such documents, the date of birth is necessary to be corrected as 21.04.1955.

The document, Ext. W-VI, which is the medical examination report of the workman on 23.10.1986, is of no help to the workman due to the following grounds :

- (a) In the statement of claim, there is no pleading regarding the document, Ext. W-VI.
- (b) The medical examination of the workman as per Ext. W-VI was not to determine the age of the workman, but the same was a regular medical checkup as required under the Mines Act and the workman himself has admitted the same.
- (c) The age of the workman as mentioned in Ext. W-VI was assessed from the appearance of the workman and there was no determination of his age.
- (d) Such a document has not been mentioned as a valid document in I.I. No. 76 to correct the date of birth of an employee.

As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred by the Hon'ble High Courts, in the two decisions cited by the learned advocate for the workman, with respect, I am of the view that the same have no clear application to the present case.

17. From the materials on record and the discussions made above, it is found that the action of the party no. 1 in denying correcting the date of birth of the workman is justified. Hence, it is ordered:-

**ORDER**

The action of the management of Western Coalfield Limited in denying the correction of the date of birth as 21.04.1955 in service excerpts, form—"B" register and service book in respect of Shri Shabir Ali and the action of superannuating the concerned workman w.e.f. 30.6.2005 is legal and justified. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली 30 अप्रैल, 2015

**का.आ. 977.—**ओद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीएपीएआरटी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिकी विवाद में केन्द्रीय सरकार ओद्योगिकी अधिकरण/श्रम न्यायालय नं. 2 चण्डीगढ़ जबलपुर के पंचाट (संदर्भ संख्या 325/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-04-2015 को प्राप्त हुआ था।

[सं. एल-42012/181/2001-आईआर (सीएम-II)]

मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 30th April, 2015

**S.O. 977.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 325/2005 of the Cent. Govt. Indus. Tribunal-cum-Labour Court No.2 Chandigarh as shown in the Annexure, in the industrial dispute between the management of Council for Advancement of People's Action & Rural and their workmen, received by the Central Government on 28/04/2015.

[No. L-42012/181/2001-IR(CM-II)]  
MD. ZAHID SHARIF, Section Officer

**ANNEXURE****IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,  
CHANDIGARH****PRESENT: SRI KEWAL KRISHAN, PRESIDING OFFICER**

Case No. I.D. No.325/2005

Registered on 12.8.2005

Sh. Ravinder Kumar, S/o Sh. Pritam Chand,  
R/o House No.461, Sector 45A,  
Chandigarh ...Petitioner

**Versus**

The Council for Advancement of People  
Action and Rural Technology  
(Regional Committee), through  
its Director (CAPART), SCO No.179-180,  
2nd Floor, Sector 17, Chandigarh ...Respondents

**APPEARANCES:**

For the workman	Sh. D.C. Mittal Adv.
For the Management	Ex parte

**AWARD**

Passed on 18.3.2015

Central Government vide Notification No. L-42012/181/2001 IR(CM-II)) Dated 6.8.2002, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the Director Council for Advancement of People's Action and Rural Technology, Chandigarh in ordering disengagement/ termination of services of Sh. Ravinder Kumar S/o Pritam Chand, the workman engaged through contractor who has completed 240 days service is just and legal? If not, to what relief the workman is entitled to and from which date?"

In response to the notice, the workman filed statement of claim pleading that he was selected by a duly constituted selection committee and was appointed as Lower Division Clerk by the management through M/s Rakshak Security Services Private Limited and he joined the service with the management on 1.5.1998 at a fixed salary of Rs.2000/- per month which was later on enhanced to Rs.3120/-.

It is further pleaded that management has all the disciplinary control over his work, attendance, leave and it was the management who used to pay him the salary. That the work is of permanent nature and is still continuing with the management.

It is further pleaded that in fact no contract was given to M/s Rakshak Security Services but the arrangement was only made for payment of salary which was a camouflage. His services were terminated w.e.f. 1.11.2000 without paying him any retrenchment compensation. That new persons were also employed by the management without serving him any notice. In the circumstances, the termination of his services is illegal and unfair.

The management filed written reply pleading that office was opened at Chandigarh in March-April and contract was given to M/s Rakshak Security Services Private Limited for providing the services of security arrangement, house-keeping and Secretarial Services. That the said company assigned the claimant to the management in May, 1998 and it was the company who used to pay him the salary and was responsible for deducting ESI, PF and to meet all the necessary requirements under the labour Laws. That the workman was never appointed by the management and has no disciplinary control over him. That the workman

was never an employee of the management. That the services of the workman were not terminated by it.

In support of its case the workman appeared in the witness box and filed his affidavit reiterating the case as set out in the claim petition.

The management was proceeded against ex parte vide order dated 23.2.2012 and the application filed by it for setting aside the ex parte order was dismissed vide order dated 22.5.2014. As such the management did not lead any evidence.

I have heard Sh. D.C. Mittal, counsel for the workman.

It was contended by the learned counsel for the workman that the workman was directly appointed by the respondent management who terminated his services without paying him any retrenchment compensation. That the management also employed new persons in his place without serving any notice on him and as such, the termination is illegal.

I have considered the contention of the learned counsel.

It may be added at the outset that the first question to be seen is whether the workman was ever engaged by the respondent management who is a statutory body. It has its rules and regulations for making the appointments. Nothing has come on the file that any such procedure was followed while giving appointment to the workman. No appointment letter has been placed on record by the workman to establish that he was actually appointed by the respondent management.

It is the case of the respondent management that services were hired from M/s Rakshak Security Services Private Limited when its office was opened in Chandigarh in 1998 and the workman himself pleaded in his statement of claim that his services were hired through the said agency. He has further himself pleaded that the arrangement for payment of salary through M/s Rakshak Security Services was made which is a camouflage. Thus the workman himself admits that his services were hired by M/s Rakshak Security Services who used to pay salary. Though workman has appeared in the witness box but he did not lead any evidence to show that his ESI and PF was deducted by the management at any point of time.

In the circumstances, when no appointment letter was issued by the respondent management and the workman was not paid any salary by it and it is not proved on the file that his PF etc. was ever deducted by the management, the workman cannot claim himself to be the employee of the respondent management. In view of his own pleadings, it can be safely concluded that he was an employee of M/s Rakshak Security Services Private Limited who provided him to the management for doing certain job and it was the said company who terminated the services and the said company has not been made party to this reference.

Being so, it cannot be said that the services of the workman were terminated by the respondent management and he is not entitled to any relief. The reference is accordingly answered against the workman. Let hard and soft copy of the award be sent to the Central Government for information and further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2015

**का.आ. 978.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीएपीएआरटी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिकी विवाद में केन्द्रीय सरकार ओद्योगिकी अधिकरण/श्रम न्यायालय नं. 2 चण्डीगढ़ के पंचाट (संदर्भ संख्या 327/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/04/2015 को प्राप्त हुआ था।

[सं. एल-42012/182/2001-आईआर (सीएम-II)]

मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 30th April, 2015

**S.O. 978.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref.327/2005 of the Cent. Govt. Indus.Tribunal-cum-Labour Court No 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of CAPART and their workmen, received by the Central Government on 28/04/2015

[No. L-42012/182/2001-IR (CM-II)]

MD. ZAHID SHARIF, Section Officer

#### ANNEXURE

#### IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

**PRESENT :** SRI KEWAL KRISHAN, Presiding Officer

**Case No. I.D. No. 327/2005**

Registered on 12.8.2005

Sh. Vinod Kumar, S/o Sh. Nakli Ram,  
R/o House No.3139, Sector 25D,  
Chandigarh

...Petitioner

#### Versus

The Council for Advancement of  
People Action and Rural Technology  
(Regional Committee), through its  
Director (CAPART), SCO No.179-180,  
2nd Floor, Sector 17,  
Chandigarh

...Respondents

**APPEARANCES**

For the workman	Sh. O.P. Batra, Adv.
For the Management	Ex parte

**AWARD**

**Passed on 18.03.2015**

Central Government *vide* Notification No. L-42012/182/2001 IR(CM-11) Dated 15.7.2002, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the Council for Advancement of People's Action and Rural Technology, Chandigarh in ordering disengagement/termination of services of Sh. Vinod Kumar S/o Sh. Nakli Ram, the workman engaged through contractor is legal and justified? If not, to what relief he is entitled to?"

In response to the notice, the workman filed statement of claim pleading that he was selected by a duly constituted selection committee and was appointed as Sweeper by the management through M/s Rakshak Security Services Private Limited and he joined the service with the management on 9.4.1998 at a fixed salary of Rs.1000/- per month which was later on enhanced to Rs.1700/-.

It is further pleaded that management has all the disciplinary control over his work, attendance, leave and it was the management who used to pay him the salary. That the work is of permanent nature and is still continuing with the management.

It is further pleaded that in fact no contract was given to M/s Rakshak Security Services but the arrangement was only made for payment of salary which was a camouflage. His services were terminated after 10.11.2000 without paying him any retrenchment compensation. That new persons were also employed by the management without serving him any notice. In the circumstances, the termination of his services is illegal and unfair.

The management filed written reply pleading that office was opened at Chandigarh in March-April and contract was given to M/s Rakshak Security Services Private Limited for providing the services of security arrangement, house-keeping and Secretarial Services. That the said company assigned the claimant to the management in May, 1998 and it was the company who used to pay him the salary and was responsible for deducting ESI, PF and to meet all the necessary requirements under the labour Laws. That the workman was never appointed by the management and has no disciplinary control over him. That the workman was never an employee of the management. That the services of the workman were not terminated by it.

In support of its case the workman appeared in the witness box and filed his affidavit reiterating the case as set out in the claim petition.

The management was proceeded against ex parte vide order dated 23.2.2012 and the application filed by it for setting aside the ex parte order was dismissed vide order dated 22.5.2014. As such the management did not lead any evidence.

I have heard Sh. O.P. Batra, counsel for the workman.

It was contended by the learned counsel for the workman that the workman was directly appointed by the respondent management who terminated his services without paying him any retrenchment compensation. That the management also employed new persons in his place without serving any notice on him and as such, the termination is illegal.

I have considered the contention of the learned counsel.

It may be added at the outset that the first question to be seen is whether the workman was ever engaged by the respondent management who is a statutory body. It has its rules and regulations for making the appointments. Nothing has come on the file that any such procedure was followed while giving appointment to the workman. No appointment letter has been placed on record by the workman to establish that he was actually appointed by the respondent management.

It is the case of the respondent management that services were hired from M/s Rakshak Security Services Private Limited when its office was opened in Chandigarh in 1998 and the workman himself pleaded in his statement of claim that his services were hired through the said agency. He has further pleaded that the arrangement for payment of salary through M/s Rakshak Security Services was made which is a camouflage. Thus the workman himself admits that his services were hired by M/s Rakshak Security Services who used to pay salary. Though workman has appeared in the witness box but he did not lead any evidence to show that his ESI and PF was deducted by the management at any point of time.

In the circumstances, when no appointment letter was issued by the respondent management and the workman was not paid any salary by it and it is not proved on the file that his PF etc. was ever deducted by the management, the workman cannot claim himself to be the employee of the respondent management. In view of his own pleadings, it can be safely concluded that he was an employee of M/s Rakshak Security Services Private Limited who provided him to the management for doing certain job and it was the said company who terminated the services and the said company has not been made party to this reference.

Being so, it cannot be said that the services of the workman were terminated by the respondent management

and he is not entitled to any relief. The reference is accordingly answered against the workman. Let hard and soft copy of the award be sent to the Central Government for information and further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली 30 अप्रैल, 2015

**का.आ. 979.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 55/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/04/2015 को प्राप्त हुआ था।

[सं.एल-22012/117/2013-आईआर (सीएम-II)]

मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 30th April, 2015

**S.O. 979.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref.55/2013 of the Cent.Govt.Indus. Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure, in the industrial dispute between the management of Sasti U/G Mines Dhoptala Sub Area of Ballapur Area of WCL and their workmen, received by the Central Government on 28/04/2015.

[No.L-22012/117/2013-IR(CM-II)]

MD. ZAHID SHARIF, Section Officer

#### ANNEXURE

#### BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/55/2013

Date: 03.02.2015.

**Party No. 1 :** The Sub-Area Manager,  
Sasti U/G Mines of Ballapur Area,  
Western Coalfields Limited, Po Sasti,  
Tah. Rajura, Distt. Chandrapur (MS).

#### Versus

**Party No. 2 :** The General Secretary,  
Rashtriya Colliery Mazdoor Congress,  
Dr. Ambedkar Ward, Ballapur,  
Post Ballapur,  
Distt. Chandrapur.(M.S.)

#### AWARD

(Dated: 3rd February, 2015)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of

Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of W.C.L. and the workman, Shri Deorao B. Kuhite for adjudication, as per letter No.L-22012/117/2013-IR (CM-II) dated 11.09.2013, with the following schedule:—

"Whether the action of the management of Sasti U/G Mines of Ballarpur Area, Western Coalfields Limited in denying employment to Shri Sriniwas, the defendant son of Shri Gundeti Rainarsu Ankulu, who has already put in 35 years service, which is contrary to the provisions of Para 9.4.4 of NCWA is legal and justified? If not, to what relief the workman is entitled?"

2. On receipt of the reference, the parties were noticed by registered post with acknowledgment due to file their respective statement of claim and written statement.

On receipt of the notice the management appeared on 03.03.2014 through their advocates. Inspite of issuance of repeated notice by registered post with acknowledgement due and sufficient service of notice on the petitioner, neither the petitioner appeared in the reference nor filed any statement of claim on 17.12.2014 and in the interest of justice and to give a chance to the petitioner to take part in the reference, the case was adjourned to 03.02.2015 for filing of Statement of claim, documents and list of witnesses and reliance by the petitioner. On 03.02.2015, both the parties remained absent. On 03.02.2015, as neither the petitioner appeared nor filed any statement of claim. Hence, the case was closed and fixed for award.

3. It is well settled that whenever a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and it is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the party fails to appear or file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the said party and the party would not be entitled to any relief.

Judging the present case with the touch stone of the settled principles as mentioned above, it is found that the petitioner has neither appeared nor filed any statement of claim and as such, he is not entitled to any relief. Hence, it is ordered:—

#### ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2015

**का.आ. 980.—**ओद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आईएमटी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 698/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/04/2015 को प्राप्त हुआ था।

[सं. एल-42012/81/2001-आईआर (सीएम-II)]

मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 30th April, 2015

**S.O. 980.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 698/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Institute of Microbial Technology and their workmen, received by the Central Government on 28/04/2015.

[No. L-42012/81/2001-IR (CM-II)]

Md. ZAHID SHARIF, Section Officer

#### ANNEXURE

#### IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

**Present:** Sri Kewal Krishan, Presiding Officer

**Case No. I.D. No. 698/2005**

Registered on 25.8.2005

Sh. Satish, Son of Sh. Tej Pal, R/o House No.4881, Malaya Colony, UT, Chd.

#### Petitioner

#### Versus

1. Union of India through its Secretary, Ministry of Science and Technology, Anusandhan Bhawan, Rafi Marg, New Delhi.
2. Institute of Microbial Technology, Sector 39, Chandigarh through its Director.

#### Respondents

#### APPEARANCES

For the workman	Sh. Prakash Chand, Adv.
For the Management	Sh. I.S. Sidhu, Adv.

#### AWARD

Passed on 26/3/2015

Central Government vide Notification No. L-42012/81/2001-IR(CM-II) dated 27.12.2001, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of Institute of Microbial Technology, Chandigarh in terminating the services of Sh. Satish Kumar S/o Sh. Tej Pal, w.e.f. 18.5.1999 is legal and justified? If not, to what relief the workman is entitled to?"

The workman submitted statement of claim pleading that he was appointed as sweeper through the contractor on 6.1.1996 for a period of one year, and after the expiry of the contract period, respondent No. 2 allowed him to work without any break. He has continuously worked from 6.1.1996 to 18.5.1999 with the management and was drawing a salary of Rs.1884/- per month. He moved an application before the Central Administrative Tribunal for regularization of his services and on coming to know about this, respondent No. 2 terminated his services on 18.5.1999 without paying him any retrenchment compensation. He has further pleaded that he worked under the supervision of respondent No. 2 who has full control over him and his attendance was marked by it. That the contract was for a period of one year showing that he worked under the respondent management and was its employee. Since his service was terminated illegally, he be reinstated in service.

Respondent management filed written reply controverting the averments and denied that there was any relationship of employer and employee between the parties. It is pleaded that the workman was deployed as a part of the manforce provided by the contractor who was awarded contract for doing certain jobs. Workman was not directly appointed by the respondents. It is further pleaded that the workman and others abandoned the services on 14.5.1999 as the contractor transferred one of their co-workman. That the respondent management did not terminate the services of the workman who was not its employee.

Parties were given opportunity to lead its evidence.

Workman appeared in the witness box and filed his affidavit reiterating his case as set out in the claim petition.

On the other hand the management has examined Sh. Cherring Tobden who filed his affidavit Exhibit R1 reiterating the stand taken by the respondent management.

I have heard Sh. Prakash Chand, counsel for the workman and Sh. I.S. Sidhu, counsel for the management and perused the file carefully.

It was argued by Mr. Prakash chand, learned counsel for the workman that workman continuously worked with the management from 6.1.1996 to 18.5.1999 which itself shows that he was an employee of the respondent management and further submitted that the management did not examine the alleged contractor to establish that workman was actually an employee of the contractor and therefore it be concluded that there is relationship of employer and employee between the parties and since the services of the workman were terminated illegally, he be reinstated in service.

I have considered the contention of the learned counsel.

It may be added at the outset that workman himself has pleaded in para 1 of the claim petition that he was appointed through a contractor on 6.1.1996 for a period of one year. Thus he admits that he was an employee of the contractor and not of the management. Nothing has come on the file that after the completion of one year, he was ever appointed by the management by following any Rules and Regulations and from mere assertions made by the workman, it cannot be said that he was allowed by the management to work with it as its employee.

No evidence whatsoever has been led by the workman that he was paid salary by the management to establish that he was an employee of the management and it cannot be said that he was ever paid any salary by the management.

The stand taken by the management is that he was a man of the contractor who deployed him to do work with respondent No. 2. The workman himself relies on a certificate Exhibit X1 which was put to Cherring Tobden, examined by the management. Its relevant portion reads as follows:—

*It is to certify that Sh. Satish Kumar S/o Sh. Tej Pal, R/o House No. 4881, Maloya Colony Chandigarh is working as a sweeper here since January, 1996 till date on contract basis under various contractors.*

Its perusal shows that it was issued by a Scientist mentioning therein that the workman was working as a helper since January, 1996 on contract basis under various contractors. Thus the document relied upon by the workman itself falsify his case that he was an employee of the management and rather clearly proves the case of the management that he was a man of the contractor. This admission on the part of the workman clinches the issue that he was a workman of the contractor. In the circumstances, if the management has not examined in contractor, the same is of no help to the workman.

There is no denial of the fact that workman and others filed OA No.471-PB-99 which was decided on 11.1.2000 and it was observed in para 4 of the judgment as follows:—

*"After hearing learned counsel for the parties and going through the pleadings, we find that applicants*

*are essentially employees of contractor who provided labour to respondent No.2."*

This order has not been challenged and it has attained finality.

Thus the competent Court where the matter was also agitated by the workman specifically held that he was an employee of the contractor.

Thus, it cannot be said that he was ever engaged by the respondent management at any point of time and he worked with the contractors and being so, there is no relationship of master and servant between the parties and it cannot be said that his services were terminated by the management.

In result, the reference is answered against workman holding that his services were not terminated by the management and he is not entitled to any relief against it.

KEWAL KRISHAN, Presiding Officer,

नई दिल्ली, 30 अप्रैल, 2015

**का.आ. 981.—**ओद्योगिक विवाद अधिनियम 1947 (1947 का 14) का धारा 17 के अनुसरण में, केन्द्रीय सरकार आईएमटी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 695/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 28.04.2015 को प्राप्त हुआ था।

[सं. एल-42012/80/2001-आईआर (सीएम-II)]  
मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 30th April, 2015

**S.O. 981.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 695/2005 of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Institute of Microbial Technology, and their workmen, received by the Central Government on 28/04/2015.

[No.-L-42012/80/2001-IR (CM-II)]  
Md. ZAHID SHARIF, Section Officer

#### ANNEXURE

#### IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

**Present:** Sri Kewal Krishan, Presiding Officer

**Case No. I.D. No. 695/2005**

Registered on 25.8.2005

Sh. Surender Kumar, S/o Sh. Lakhmi Chand  
resident of House No. 4046,  
Village Maloya, Chandigarh

...Petitioner

**Versus**

1. Union of India through its Secretary,  
Ministry of Science and Technology,  
Anusandhan Bhawan, Rafi Marg,  
New Delhi.

2. Institute of Microbial Technology,  
Sector 39, Chandigarh through its  
Director

...Respondents

**APPEARANCES**

For the workman                    Sh. Prakash Chand, Adv.

For the Management                Sh. I.S. Sidhu, Adv.

**AWARD**

Passed on 26/3/2015

Central Government *vide* Notification No. L-42012/80/2001 [IR(CM-II)] dated 16.7.2002, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of Institute of Microbial Technology, Chandigarh in terminating the services of Sh. Surender Singh S/o Sh. Lakhmi Chand, *w.e.f.* 18.5.1999 is legal and Justified? If not, to what relief the workman is entitled to?"

The workman submitted statement of claim pleading that he was appointed as helper-cum-sweeper through the contractor on 18.12.1992 for a period of one year, and after the expiry of the contract period, respondent No.2 allowed him to work without any break. He has continuously worked from 18.12.1992 to 18.5.1999 with the management and was drawing a salary of Rs.1884/- per month. He moved an application before the Central Administrative Tribunal for regularization of his services and on coming to know about this, respondent No. 2 terminated his services on 18.5.1999 without paying him any retrenchment compensation. He has further pleaded that he worked under the supervision of respondent No. 2 who has full control over him and his attendance was marked by it. That the contract was for a period of one year showing that he worked under the respondent management and was its employee. Since his service was terminated illegally, he be reinstated in service.

Respondent management filed written reply controverting the averments and denied that there was any relationship of employer and employee between the parties. It is pleaded that the workman was deployed as a part of the manforce provided by the contractor who was awarded contract for doing certain jobs. Workman was not directly appointed by the respondents. It is further pleaded that the workman and others abandoned the services on 14.5.1999 as the contractor transferred one of their co-

workman. That the respondent management did not terminate the services of the workman who was not its employee.

Parties were given opportunity to lead its evidence.

Workman appeared in the witness box and filed his affidavit reiterating his case as set out in the claim petition.

On the other hand the management has examined Sh. Cherring Tobden who filed his affidavit Exhibit R1 reiterating the stand taken by the respondent management.

I have heard Sh. Prakash Chand, counsel for the workman and Sh. I.S. Sidhu, counsel for the management and perused the file carefully.

It was argued by Mr. Prakash Chand, learned counsel for the workman that workman continuously worked with the management from 16.9.1996 to 18.5.1999 which itself shows that he was an employee of the respondent management and further submitted that the management did not examine the alleged contractor to establish that workman was actually an employee of the contractor and therefore it be concluded that there is relationship of employer and employee between the parties and since the services of the workman were terminated illegally, he be reinstated in service.

I have considered the contention of the learned counsel.

It may be added at the outset that workman himself has pleaded in para 1 of the claim petition that he was appointed through a contractor on 6.1.1996 for a period of one year. Thus he admits that he was an employee of the contractor and not of the management. Nothing has come on the file that after the completion of one year, he was ever appointed by the management by following any Rules and Regulations and from mere assertions made by the workman, it cannot be said that he was allowed by the management to work with it as its employee.

No evidence whatsoever has been led by the workman that he was paid salary by the management to establish that he was an employee of the management and it cannot be said that he was ever paid any salary by the management.

The stand taken by the management is that he was a man of the contractor who deployed him to do work with respondent No.2. The workman himself relies on a certificate Exhibit X1 which was put to Cherring Tobden, examined by the management. Its relevant portion reads as follows:—

*It is to certify that Sh. Surender Kumar S/o Sh. Lakhmi Chand, R/o House No. 4046, Village Maloya Chandigarh is working as a helper/sweeper here since 18.12.1992 till date on contract basis under various contractors.*



this, respondent No. 2 terminated his services on 18.5.1999 without paying him any retrenchment compensation. He has further pleaded that he worked under the supervision of respondent No. 2 who has full control over him and his attendance was marked by it. That the contract was for a period of one year showing that he worked under the respondent management and was its employee. Since his service was terminated illegally, he be reinstated in service.

Respondent management filed written reply controverting the averments and denied that there was any relationship of employer and employee between the parties. It is pleaded that the workman was deployed as a part of the manforce provided by the contractor who was awarded contract for doing certain jobs. Workman was not directly appointed by the respondents. It is further pleaded that the workman and others abandoned the services on 14.5.1999 as the contractor transferred one of their co-workman. That the respondent management did not terminate the services of the workman who was not its employee.

Parties were given opportunity to lead its evidence.

Workman appeared in the witness box and filed his affidavit reiterating his case as set out in the claim petition.

On the other hand the management has examined Sh. Cherring Tobden who filed his affidavit Exhibit R1 reiterating the stand taken by the respondent management.

I have heard Sh. Prakash Chand, counsel for the workman and Sh. I.S. Sidhu, counsel for the management and perused the file carefully.

It was argued by Mr. Prakash Chand, learned counsel for the workman that workman continuously worked with the management from 18.12.1992 to 18.5.1999 which itself shows that he was an employee of the respondent management and further submitted that the management did not examine the alleged contractor to establish that workman was actually an employee of the contractor and therefore it be concluded that there is relationship of employer and employee between the parties and since the services of the workman were terminated illegally, he be reinstated in service.

I have considered the contention of the learned counsel.

It may be added at the outset that workman himself has pleaded in para 1 of the claim petition that he was appointed through a contractor on 1.1.1992 for a period of one year. Thus he admits that he was an employee of the contractor and not of the management. Nothing has come on the file that after the completion of one year, he was ever appointed by the management by following any Rules and Regulations and from mere assertions made by the workman, it cannot be said that he was allowed by the management to work with it as its employee.

No evidence whatsoever has been led by the workman that he was paid salary by the management to establish that he was, an employee of the management and it cannot be said that he was ever paid any salary by the management.

The stand taken by the management is that he was a man of the contractor who deployed him to do work with respondent No.2. The workman himself relies on a certificate Exhibit X1 which was put to Cherring Tobden, examined by the management. Its relevant portion reads as follows:—

*It is to certify that Sh. Raja Ram S/o Sh. Kundiya Ram R/o House No.1026, Village Khanpur, Ward No. 10, Village Khanpur is working as a helper/attendant here since January, 1992 till date on contract basis under various contractors.*

Its perusal shows that it was issued by a Scientist mentioning therein that the workman was working as a helper since January, 1992 on contract basis under various contractors. Thus the document relied upon by the workman itself falsify his case that he was an employee of the management and rather clearly proves the case of the management that he was a man of the contractor. This admission on the part of the workman clinches the issue that he was a workman of the contractor. In the circumstances, if the management has not examined in contractor, the same is of no help to the workman.

There is no denial of the fact that workman and others filed OA No.471-PB-99 which was decided on 11.1.2000 and it was observed in para 4 of the judgment as follows:—

*"After hearing learned counsel for the parties and going through the pleadings, we find that applicants are essentially employees of contractor who provided labour to respondent No. 2."*

This order has not been challenged and it has attained finality.

Thus the competent Court where the matter was also agitated by the workman specifically held that he was an employee of the contractor.

Thus, it cannot be said that he was ever engaged by the respondent management at any point of time and he worked with the contractors and being so, there is no relationship of master and servant between the parties and it cannot be said that his services were terminated by the management.

In result, the reference is answered against workman holding that his services were not terminated by the management and he is not entitled to any relief against it. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2015

**का.आ. 983.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आईएमटी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 694/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/04/2015 को प्राप्त हुआ था।

[सं. एल-42012/79/2001-आईआर (सीएम-II)]

मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 30th April, 2015

**S.O. 983.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 694/2005 of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Institute of Microbial Technology and their workmen, received by the Central Government on 28/04/2015.

[No. L-42012/79/2001-IR (CM-II)]

MD. ZAHID SHARIF, Section Officer

#### ANNEXURE

#### IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

**Present:** Sri Kewal Krishan, Presiding Officer

**Case No. I.D. No. 699/2005**

Registered on 25.8.2005

Sh. Pawan Kumar, Son of Sh. Ralla Ram, R/o Village Khanpur, Ward No.10, Tehsil Kharar, District Ropar.

...Petitioner

#### Versus

1. Union of India through its Secretary, Ministry of Science and Technology, Anusandhan Bhawan, Rafi Marg, New Delhi.
2. Institute of Microbial Technology, Sector 39, Chandigarh through its Director.

...Respondents

#### APPEARANCES

For the workman Sh. Prakash Chand, Adv.

For the Management Sh. I.S. Sidhu, Adv.

#### AWARD

Passed on 26th March, 2015

Central Government vide Notification No. L-42012/62/2001 (IR(CM-II)) Dated 24.12.2001, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of Institute of Microbial Technology, Chandigarh in terminating the services of Sh. Pawan Kumar S/o Sh. Ralla Ram, w.e.f. 18.5.1999 is legal and Justified? If not, to what relief the workman is entitled to?"

The workman submitted statement of claim pleading that he was appointed as Sweeper through the contractor on 1.8.1994 for a period of one year, and after the expiry of the contract period, respondent No. 2 allowed him to work without any break. He has continuously worked from 1.8.1994 to 18.5.1999 with the management and was drawing a salary of Rs. 1884/- per month. He moved an application before the Central Administrative Tribunal for regularization of his services and on coming to know about this, respondent No. 2 terminated his services on 18.5.1999 without paying him any retrenchment compensation. He has further pleaded that he worked under the supervision of respondent No. 2 who has full control over him and his attendance was marked by it. That the contract was for a period of one year showing that he worked under the respondent management and was its employee. Since his service was terminated illegally, he be reinstated in service.

Respondent management filed written reply controverting the averments and denied that there was any relationship of employer and employee between the parties. It is pleaded that the workman was deployed as a part of the manforce provided by the contractor who was awarded contract for doing certain jobs. Workman was not directly appointed by the respondents. It is further pleaded that the workman and others abandoned the services on 14.5.1999 as the contractor transferred one of their co-workman. That the respondent management did not terminate the services of the workman who was not its employee.

Parties were given opportunity to lead its evidence.

Workman appeared in the witness box and filed his affidavit reiterating his case as set out in the claim petition.

On the other hand the management has examined Sh. Cherring Tobden who filed his affidavit Exhibit R1 reiterating the stand taken by the respondent management.

I have heard Sh. Prakash Chand, counsel for the workman and Sh. I.S. Sidhu, counsel for the management and perused the file carefully.

It was argued by Mr. Prakash Chand, learned counsel for the workman that workman continuously worked with the management from 1.8.1994 to 18.5.1999 which itself shows that he was an employee of the respondent management and further submitted that the management did not examine the alleged contractor to establish that workman was actually an employee of the contractor and therefore it be concluded that there is relationship of employer and employee between the parties and since the services of the workman were terminated illegally, he be reinstated in service.

I have considered the contention of the learned counsel.

It may be added at the outset that workman himself has pleaded in para 1 of the claim petition that he was appointed through a contractor on 1.8.1994 for a period of one year. Thus he admits that he was an employee of the contractor and not of the management. Nothing has come on the file that after the completion of one year, he was ever appointed by the management by following any Rules and Regulations and from mere assertions made by the workman, it cannot be said that he was allowed by the management to work with it as its employee.

No evidence whatsoever has been led by the workman that he was paid salary by the management to establish that he was an employee of the management and it cannot be said that he was ever paid any salary by the management.

The stand taken by the management is that he was a man of the contractor who deployed him to do work with respondent No. 2. The workman himself relies on a certificate Exhibit X1 which was put to Cherring Tobden, examined by the management. Its relevant portion reads as follows:-

It is to certify that Sh. Pawan Kumar S/o Sh. Ralla Ram, R/o Village Khanpur, Ward No. 10, Tehsil Kharar, distt. Ropar, Chandigarh is working as a sweeper here since 1.8.1994 till date on contract basis under various contractors.

Its perusal shows that it was issued by a Scientist mentioning therein that the workman was working as a helper since 1.8.1994 on contract basis under various contractors. Thus the document relied upon by the workman itself falsify his case that he was an employee of the management and rather clearly proves the case of the management that he was a man of the contractor. This admission on the part of the workman clinches the issue that he was a workman of the contractor. In the circumstances, if the management has not examined in contractor, the same is of no help to the workman.

There is no denial of the fact that workman and others filed OA No. 471-PB-99 which was decided on 11.1.2000 and it was observed in para 4 of the judgment as follows:—

"After hearing learned counsel for the parties and going through the pleadings, we find that applicants

are essentially employees of contractor who provided labour to respondent No .2."

This order has not been challenged and it has attained finality.

Thus the competent Court where the matter was also agitated by the workman specifically held that he was an employee of the contractor.

Thus, it cannot be said that he was ever engaged by the respondent management at any point of time and he worked with the contractors and being so, there is no relationship of employer and employee between the parties and it cannot be said that his services were terminated by the management.

In result, the reference is answered against workman holding that his services were not terminated by the management and he is not entitled to any relief against it. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2015

**का.आ. 984.—**ऑटोग्राफिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आईएमटी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ऑटोग्राफिक विवाद में केन्द्रीय सरकार ऑटोग्राफिक अधिकारण/अम न्यायालय नं 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 700/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/04/2015 को प्राप्त हुआ था।

[सं. एल-42012/78/2001-आईआर (सीएम-II)]

मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 30th April, 2015

**S.O. 984.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 700/2005 of the Cent. Govt. Indus.Tribunal-cum-Labour Court No 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Institute of Microbial Technology and their workmen, received by the Central Government on 28/04/2015.

[No. L-42012/78/2001 - IR (CM-II)  
MD. ZAHID SHARIF, Section Officer

#### ANNEXURE

#### IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

**Present:** Sri Kewal Krishan, Presiding Officer

**Case No. I.D. No. 700/2005**

Registered on 25.8.2005

Sh. Prem Chand, S/o Sh. Jagan Ram resident of House No. 4225, Palsora Colony No.II, Chandigarh

...Petitioner

### Versus

1. Union of India through its Secretary, Ministry of Science and Technology, Anusandhan Bhawan Rafi Marg, New Delhi.
2. Institute of Microbial Technology, Sector 39, Chandigarh through its Director.

...Respondents

### APPEARANCES

For the workman	Sh. Prakash Chand, Adv.
For the Management	Sh. I.S. Sidhu, Adv.

### AWARD

#### Passed on 26/3/15

Central Government *vide* Notification No. L-42012/78/2001 (IR(CM-11)) Dated 30.1.2002, by exercising its powers under Section 10 Sub-Section (1) Clause (d) and Sub-Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of Institute of Microbial Technology, Chandigarh in terminating the services of Sh. Prem Chand S/o Sh. Jagan Ram, w.e.f. 18.5.1999 is legal and Justified? If not, to what relief the workman is entitled to?"

The workman submitted statement of claim pleading that he was appointed as helper through the contractor on 1.1.1991 for a period of one year, and after the expiry of the contract period, respondent No.2 allowed him to work without any break. He has continuously worked from 1.1.1991 to 18.5.1999 with the management and was drawing a salary of Rs. 1884/- per month. He moved an application before the Central Administrative Tribunal for regularization of his services and on coming to know about this, respondent No. 2 terminated his services on 18.5.1999 without paying him any retrenchment compensation. He has further pleaded that he worked under the supervision of respondent No. 2 who has full control over him and his attendance was marked by it. That the contract was for a period of one year showing that he worked under the respondent management and was its employee. Since his service was terminated illegally, he be reinstated in service.

Respondent management filed written reply controverting the averments and denied that there was any relationship of employer and employee between the parties. It is pleaded that the workman was deployed as a part of the manforce provided by the contractor who was awarded contract for doing certain jobs. Workman was not

directly appointed by the respondents. It is further pleaded that the workman and others abandoned the services on 14.5.1999 as the contractor transferred one of their co-workman. That the respondent management did not terminate the services of the workman who was not its employee.

Parties were given opportunity to lead its evidence.

Workman appeared in the witness box and filed his affidavit reiterating his case as set out in the claim petition.

On the other hand the management has examined Sh. Cherring Tobden who filed his affidavit Exhibit R1 reiterating the stand taken by the respondent management.

I have heard Sh. Prakash Chand, counsel for the workman and Sh. I.S. Sidhu, counsel for the management and perused the file carefully.

It was argued by Mr. Prakash Chand, learned counsel for the workman that workman continuously worked with the management from 1.1.1991 to 18.5.1999 which itself shows that he was an employee of the respondent management and further submitted that the management did not examine the alleged contractor to establish that workman was actually an employee of the contractor and therefore it be concluded that there is relationship of employer and employee between the parties and since the services of the workman were terminated illegally, he be reinstated in service.

I have considered the contention of the learned counsel.

It may be added at the outset that workman himself has pleaded in para 1 of the claim petition that he was appointed through a contractor on 1.1.1991 for a period of one year. Thus he admits that he was an employee of the contractor and not of the management. Nothing has come on the file that after the completion of one year, he was ever appointed by the management by following any Rules and Regulations and from mere assertions made by the workman, it cannot be said that he was allowed by the management to work with it as its employee.

No evidence whatsoever has been led by the workman that he was paid salary by the management to establish that he was an employee of the management and it cannot be said that he was ever paid any salary by the management.

The stand taken by the management is that he was a man of the contractor who deployed him to do work with respondent No. 2. The workman himself relies on a certificate Exhibit X1 which was put to Cherring Tobden, examined by the management. Its relevant portion reads as follows:—

It is to certify that Sh. Prem Chand S/o Sh. Jaggan Ram, R/o House No. 4225, Palsora Colony No. 2 Chandigarh is working as a helper/sweeper here since January, 1991 till date on contract basis under various contractors.

Its perusal shows that it was issued by a Scientist mentioning therein that the workman was working as a helper since January, 1991 on contract basis under various contractors. Thus the document relied upon by the workman itself falsify his case that he was an employee of the management and rather clearly proves the case of the management that he was a man of the contractor. This admission on the part of the workman clinches the issue that he was a workman of the contractor. In the circumstances, if the management has not examined in contractor, the same is of no help to the workman.

There is no denial of the fact that workman and others filed OA No.471-PB-99 which was decided on 11.1.2000 and it was observed in para 4 of the judgment as follows:—

"After hearing learned counsel for the parties and going through the pleadings, we find that applicants are essentially employees of contractor who provided labour to respondent No. 2."

This order has not been challenged and it has attained finality.

Thus the competent Court where the matter was also agitated by the workman specifically held that he was an employee of the contractor.

Thus, it cannot be said that he was ever engaged by the respondent management at any point of time and he worked with the contractors and being so, there is no relationship of master and servant between the parties and it cannot be said that his services were terminated by the management.

In result, the reference is answered against workman holding that his services were not terminated by the management and he is not entitled to any relief against it. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2015

**का.आ. 985.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आईएमटी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 688/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/04/2015 को प्राप्त हुआ था।

[सं. एल-42012/63/2001-आईआर (सीएम-II)]

मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 30th April, 2015

**S.O. 985.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 688/2005 of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between

the management of Institute of Microbial Technology and their workmen, received by the Central Government on 28/04/2015.

[No. L-42012/63/2001-IR(CM-II)]

MD. ZAHID SHARIF, Section Officer

#### ANNEXURE

#### IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

**Present:** Sri Kewal Krishan, Presiding Officer

Case No. I.D. No. 688/2005

Registered on 25.8.2005

Sh. Bittu, S/o Sh. Makhu resident of House No. 1109, Ward No. 9, Tehsil Kharar, District Ropar.

...Petitioner

#### Versus

1. Union of India through its Secretary, Ministry of Science and Technology, Anusandhan Bhawan, Rafi Marg, New Delhi.
2. Institute of Microbial Technology, Sector 39, Chandigarh through its Director.

...Respondents

#### APPEARANCES

For the workman

Sh. Prakash Chand, Adv.

For the Management

Sh. I.S. Sidhu, Adv.

#### AWARD

Passed on 26.3.2015

Central Government *vide* Notification No. L-42012/63/2001-IR(CM-II) dated 8.1.2002, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of Institute of Microbial Technology, Chandigarh in terminating the services of Sh. Bittu S/o Sh. Makhu, *w.e.f.* 18.5.1999 is legal and Justified? If not, to what relief the workman is entitled to?"

The workman submitted statement of claim pleading that he was appointed as sweeper through the contractor on 1.2.1992 for a period of one year, and after the expiry of the contract period, respondent No. 2 allowed him to work without any break. He has continuously worked from 1.2.1992 to 18.5.1999 with the management and was drawing a salary of Rs. 1884/- per month. He moved an application before the Central Administrative Tribunal for regularization of his services and on coming to know about this, respondent No. 2 terminated his services on 18.5.1999 without paying him any retrenchment compensation. He

has further pleaded that he worked under the supervision of respondent No. 2 who has full control over him and his attendance was marked by it. That the contract was for a period of one year showing that he worked under the respondent management and was its employee. Since his service was terminated illegally, he be reinstated in service.

Respondent management filed written reply controverting the averments and denied that there was any relationship of employer and employee between the parties. It is pleaded that the workman was deployed as a part of the manforce provided by the contractor who was awarded contract for doing certain jobs. Workman was not directly appointed by the respondents. It is further pleaded that the workman and others abandoned the services on 14.5.1999 as the contractor transferred one of their co-workman. That the respondent management did not terminate the services of the workman who was not its employee.

Parties were given opportunity to lead its evidence.

Workman appeared in the witness box and filed his affidavit reiterating his case as set out in the claim petition.

On the other hand the management has examined Sh. Cherring Tobden who filed his affidavit Exhibit R1 reiterating the stand taken by the respondent management.

I have heard Sh. Prakash Chand, counsel for the workman and Sh. I.S. Sidhu, counsel for the management and perused the file carefully.

It was argued by Mr. Prakash Chand, learned counsel for the workman that workman continuously worked with the management from 1.2.1992 to 18.5.1999 which itself shows that he was an employee of the respondent management and further submitted that the management did not examine the alleged contractor to establish that workman was actually an employee of the contractor and therefore it be concluded that there is relationship of employer and employee between the parties and since the services of the workman were terminated illegally, he be reinstated in service.

I have considered the contention of the learned counsel.

It may be added at the outset that workman himself has pleaded in para 1 of the claim petition that he was appointed through a contractor on 1.2.1992 for a period of one year. Thus he admits that he was an employee of the contractor and not of the management. Nothing has come on the file that after the completion of one year, he was ever appointed by the management by following any Rules and Regulations and from mere assertions made by the workman, it cannot be said that he was allowed by the management to work with it as its employee.

No evidence whatsoever has been led by the workman that he was paid salary by the management to establish that he was an employee of the management and it cannot be said that he was ever paid any salary by the management.

The stand taken by the management is that he was a man of the contractor who deployed him to do work with respondent No. 2. The workman himself relies on a certificate Exhibit X1 which was put to Cherring Tobden, examined by the management. Its relevant portion reads as follows:—

It is to certify that Sh. Bittu S/o Sh. Makhu, R/o House No. 1109, Ward No. 9, Tehsil Kharar, District Ropar is working as a helper/sweeper here since 1.2.1992 till date on contract basis under various contractors.

Its perusal shows that it was issued by a Scientist mentioning therein that the workman was working as a helper since February, 1992 on contract basis under various contractors. Thus the document relied upon by the workman itself falsify his case that he was an employee of the management and rather clearly proves the case of the management that he was a man of the contractor. This admission on the part of the workman clinches the issue that he was a workman of the contractor. In the circumstances, if the management has not examined in contractor, the same is of no help to the workman.

There is no denial of the fact that workman and others filed OA No.471-PB-99 which was decided on 11.1.2000 and it was observed in para 4 of the judgment as follows:—

"After hearing learned counsel for the parties and going through the pleadings, we find that applicants are essentially employees of contractor who provided labour to respondent No. 2."

This order has not been challenged and it has attained finality.

Thus the competent Court where the matter was also agitated by the workman specifically held that he was an employee of the contractor.

Thus, it cannot be said that he was ever engaged by the respondent management at any point of time and he worked with the contractors and being so, there is no relationship of master and servant between the parties and it cannot be said that his services were terminated by the management.

In result, the reference is answered against workman holding that his services were not terminated by the management and he is not entitled to any relief against it. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer